

Exhibit 1

Pima County Contract with Swaim Associates

PIMA COUNTY FACILITIES MANAGEMENT DEPARTMENT		CONTRACT	
PROJECT:	Project Curvature	NO. <u>CT-FM-16-237</u>	
CONSULTANT:	Swaim Associates, Ltd. 7350 E. Speedway Blvd. #210 Tucson, AZ 85710	AMENDMENT NO. _____	
AMOUNT:	\$726,595.00	This number must appear on all invoices, correspondence and documents pertaining to this contract.	
FUNDING:	Certificates of Participation- 2016	(stamp here)	

CONSULTANT SERVICES CONTRACT

THIS Contract is entered into between Pima County, a body politic and corporate of the State of Arizona, hereinafter called COUNTY, and Swaim Associates, Ltd. hereinafter called CONSULTANT, collectively referred to as the Parties.

WITNESSETH

WHEREAS, COUNTY requires the services of a CONSULTANT registered in the State of Arizona and qualified to provide Architectural and Engineering Design Services for Project Curvature; and,

WHEREAS, CONSULTANT is qualified and willing to provide such services; and

WHEREAS, due to CONSULTANT'S past experience and knowledge specific to this project, it was determined under the emergency procurement provisions of A.R.S. §34-606 and Pima County Code 11.20.060 that a competitive procurement for this project would be contrary to the COUNTY's interests; and

WHEREAS, at its regularly scheduled meeting on January 19, 2016, the Board of Supervisors approved the award of the Contract to CONSULTANT and approved the Procurement Director to sign this Contract as well as future amendments to the Contract; and

WHEREAS, CONSULTANT has proposed to perform the work at a price acceptable to COUNTY.

NOW, THEREFORE, in consideration of the foregoing recitals and other valuable and good consideration the Parties agree as follows:

ARTICLE 1 – TERM AND EXTENSION/RENEWAL/CHANGES

This Contract as approved by the Board of Supervisors commences on January 19, 2016, and terminates on February 28, 2017, unless sooner terminated or further extended pursuant to the provisions of this Contract.

COUNTY has the option to extend the Contract termination date for project completion. Any modification or extension of the Contract termination date will be by formal written amendment executed by the Parties. The Procurement Director or the COUNTY Board of Supervisors, as required by the Pima County Procurement Code must approve change orders to the Contract or the Scope of Services before CONSULTANT performs the work authorized by the change order.

ARTICLE 2 – SCOPE OF SERVICES

CONSULTANT agrees to provide Architectural and Engineering Services for the Project for the COUNTY as described in **EXHIBIT A: SCOPE OF WORK** (8 pages) and as detailed by the Design Professional responsibilities included in **EXHIBIT B: GENERAL CONDITIONS** (45 pages), attachments to this Contract.

ARTICLE 3 – COMPENSATION AND PAYMENT

In consideration of the services specified in this Contract, COUNTY agrees to pay CONSULTANT Not to Exceed Seven Hundred Twenty Six Thousand Five Hundred Ninety Five Dollars (\$726,595.00). This not to exceed amount includes a \$50,000.00 design contingency to be used by the CONSULTANT only with prior written direction and approval of the County Project Manager. CONSULTANT'S fees are as stated in **EXHIBIT C: CONSULTANT FEE PROPOSAL** (5 pages) attached to this Contract. Hourly rates and all other rates included under this Contract will remain fixed throughout the term of the Contract. COUNTY may consider adjustments to rates in connection with any extensions of the Contract term.

Unless otherwise agreed, CONSULTANT will submit invoices monthly. As required by the COUNTY, all invoices will be accompanied by a narrative description of the work performed during the period covered by the invoice, time accounting information, and an allocation of all direct costs, including reimbursable costs and SUBCONSULTANT charges, to the tasks identified in the Scope of Work for which those costs were incurred. The time accounting information should be sufficient to show the workers and hours worked by day for the period covered by the invoice. SUBCONSULTANT charges will be supported by appropriate documentation with each separate invoice submitted.

For the period of record retention required under Article 22, COUNTY reserves the right to question any payment made under this article and to require reimbursement therefor by setoff or otherwise for payments determined to be improper or contrary to the Contract or law.

COUNTY and CONSULTANT may reallocate costs and proportionate fee between or among tasks by mutual agreement, provided that the transfer does not change the total amount of the Contract. CONSULTANT will not perform work in excess of the Contract Amount without prior authorization by an amendment executed by COUNTY. Work performed in excess of the Contract Amount without prior authorization by amendment is at CONSULTANT'S own risk.

ARTICLE 4 – INSURANCE

The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. COUNTY in no way warrants that the minimum limits contained herein are sufficient to protect the CONSULTANT from liabilities that arise out of the performance of the work under this Contract. The CONSULTANT is free to purchase additional insurance.

CONSULTANT'S insurance will be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers will have an "A.M." Best" rating of not less than A- VII. COUNTY in no way warrants that the above-required minimum insurer rating is sufficient to protect the CONSULTANT from potential insurer insolvency.

4.1 Minimum Scope and Limits of Insurance:

CONSULTANT will procure and maintain, until all of their obligations have been discharged, coverage with limits of liability not less than those stated below.

4.1.1 Commercial General Liability (CGL) – Occurrence Form with limits of \$1,000,000 Each Occurrence and \$2,000,000 General Aggregate. Policy will include bodily injury, property damage, and broad form contractual liability coverage, and products – completed operations.

4.1.2 Business Automobile Liability – Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Contract with a Combined Single Limit (CSL) of \$1,000,000.

4.1.3 Workers' Compensation and Employers' Liability - Statutory requirements and benefits. Coverage is compulsory for employers of one or more employees. Employer's Liability - \$500,000.

Note: The Workers' Compensation requirement will not apply to a CONSULTANT that is exempt under A.R.S. § 23-901, and when such CONSULTANT executes the appropriate COUNTY Sole Proprietor or Independent CONSULTANT waiver form.

4.1.4 Professional Liability (Errors and Omissions) Insurance – This insurance is required when soliciting work from licensed professionals. The policy limits will be not less than \$2,000,000

Each Claim and \$2,000,000 Annual Aggregate. The policy will cover professional misconduct or negligent acts for those positions defined in the Scope of Work of this contract.

In the event that the Professional Liability insurance required by this Contract is written on a claims-made basis, CONSULTANT warrants that any retroactive date under the policy will precede the effective date of this Contract and, either continuous coverage will be maintained, or an extended discovery period will be exercised, for a period of two (2) years beginning at the time work under this Contract is completed.

Examples of Professional Services requiring E&O insurance: Accounting, Architecture, Asbestos Design, Inspection or Abatement Contractors, Licensed Health Care Practitioners, Legal Services, Engineering Services, or Surveying

4.2 Additional Insurance Requirements:

The policies will include, or be endorsed to include, as required by this written agreement, the following provisions:

- 4.2.1 Additional Insured Endorsement: The General Liability and Business Automobile Liability Policies will each be endorsed to include COUNTY, its departments, districts, boards, commissions, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the CONSULTANT.
- 4.2.2 Subrogation Endorsement: The General Liability, Business Automobile Liability and Workers' Compensation Policies will each contain a waiver of subrogation endorsement in favor of COUNTY, and its departments, districts, boards, commissions, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the CONSULTANT.
- 4.2.3 Primary Insurance Endorsement: The CONSULTANT'S policies will stipulate that the insurance afforded the CONSULTANT will be primary and that any insurance carried by the Department, its agents, officials, employees or COUNTY will be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).
- 4.2.4 Insurance provided by the CONSULTANT will not limit the CONSULTANT'S liability assumed under the indemnification provisions of this Contract.

4.3 Notice of Cancellation:

For each insurance policy required by the insurance provisions of this Contract, the CONSULTANT must provide to COUNTY, within two (2) business days of receipt, a notice if a policy is suspended, voided, or cancelled for any reason. Such notice will be mailed, emailed, hand-delivered or sent by facsimile transmission to (Enter Contracting Agency Representative's Name, Address, and Fax Number here).

4.4 Verification of Coverage:

CONSULTANT will furnish COUNTY with certificates of insurance (valid ACORD form or equivalent approved by COUNTY) as required by this Contract. An authorized representative of the insurer will sign the certificates.

- 4.4.1 All certificates and endorsements, as required by this written agreement, are to be received and approved by COUNTY before work commences. Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance coverages or policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.
- 4.4.2 All certificates required by this Contract will be sent directly to the Department. COUNTY project or contract number and project description will be noted on the certificate of insurance. COUNTY reserves the right to require complete copies of all insurance policies required by this Contract at any time.

4.5 Approval and Modifications:

COUNTY Risk Management reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

ARTICLE 5 – INDEMNIFICATION

To the fullest extent permitted by law, CONSULTANT indemnifies and holds harmless COUNTY officers, employees and agents from and against any and all suits, actions, legal administrative proceedings, claims or demands and costs attendant thereto, including reasonable attorney's fees and court costs, to the extent caused by any negligent, reckless or intentionally wrongful act or omission of CONSULTANT, its agents, employees or anyone acting under its direction or control or on its behalf in connection with performance of this Contract. The obligations under this Article do not extend to the negligence of COUNTY its agents, employees or indemnities.

All warranty and indemnification obligations under this Contract survive expiration or termination of the Contract, unless expressly provided otherwise. Any indemnification provision inconsistent with A.R.S. § 34-226 is, in all cases, not void, but will be interpreted and applied as if it were consistent with A.R.S. § 34-226.

Upon request, CONSULTANT may fully indemnify and hold harmless any private property owner granting a right of entry to CONSULTANT for the purpose of completing the project.

ARTICLE 6 – COMPLIANCE WITH LAWS

CONSULTANT will comply with all applicable federal, state, and local laws, rules, regulations, standards and Executive Orders, without limitation to those designated within this Contract. The laws and regulations of the State of Arizona govern the rights of the Parties, the performance of this Contract, and any disputes hereunder. Any action relating to this Contract will be brought and maintained in Superior Court in Pima County. Any changes in the governing laws, rules, and regulations during the term of this Contract apply, but do not require an amendment.

ARTICLE 7 – STATUS OF CONSULTANT

The status of CONSULTANT is that of an independent contractor and CONSULTANT is not considered an employee of Pima County and is not entitled to receive any of the fringe benefits associated with regular employment, and will not be subject to the provisions of the merit system. CONSULTANT will be responsible for payment of all Federal, State and Local taxes associated with the compensation received by CONSULTANT from COUNTY. CONSULTANT will be responsible for program development and operation without supervision by COUNTY.

ARTICLE 8 – CONSULTANT'S PERFORMANCE

CONSULTANT will perform the work in accordance with the terms of the Contract and with the degree of care and skill required of any similarly situated Arizona registrant. CONSULTANT will employ suitably trained and skilled professional personnel to perform all required services under this Contract. Prior to changing any key personnel, especially those key personnel COUNTY relied upon in making this Contract, CONSULTANT will obtain the approval of COUNTY.

CONSULTANT is responsible for the professional quality, technical accuracy, timely completion, and the coordination of all its effort and other services furnished by CONSULTANT under this Agreement. Without additional compensation, CONSULTANT will correct or revise any errors, omissions, or other deficiencies in all products of its efforts and other services provided. This includes resolving any deficiencies arising out of the acts or omissions of CONSULTANT found during or after the course of the services performed by or for CONSULTANT under this Agreement, regardless of COUNTY having knowledge of or condoning or accepting the products or the services. Correction of such deficiencies will be at no cost to COUNTY.

ARTICLE 9 – NON-WAIVER

The failure of COUNTY to insist in any one or more instances upon full and complete compliance with any of the terms and provisions of this Contract or to take any action permitted as a result thereof is not a waiver or relinquishment of the right to insist upon full and complete performance of the same or any other covenant or condition either in the past or in the future. The acceptance by either party of sums less than may be due and owing it at any time is not an accord and satisfaction.

ARTICLE 10 – SUBCONSULTANT

CONSULTANT will be fully responsible for all acts and omissions of its SUBCONSULTANT and of persons directly or indirectly employed by SUBCONSULTANT and of persons for whose acts any of them may be liable to the same extent that CONSULTANT is responsible for the acts and omissions of persons directly employed by it. Nothing in this Contract creates any obligation on the part of COUNTY to pay or see to the payment of any money due any SUBCONSULTANT, except as may be required by law.

ARTICLE 11 – NON-ASSIGNMENT

CONSULTANT will not assign its rights to this Contract in whole or in part, without prior written approval of COUNTY. COUNTY may withhold assignment at its sole discretion, provided that COUNTY will not unreasonably withhold such approval.

ARTICLE 12 – NON-DISCRIMINATION

CONSULTANT will comply with all provisions and requirements of Arizona Executive Order 2009-09 which is hereby incorporated into this Contract as if set forth in full herein **including flow down of all provisions and requirements to any SUBCONSULTANTS**. During the performance of this Contract, CONSULTANT will not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.

ARTICLE 13 – AMERICANS WITH DISABILITIES ACT

CONSULTANT will comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. If CONSULTANT is carrying out government programs or services on behalf of COUNTY, then CONSULTANT will maintain accessibility to the program to the same extent and degree that would be required of COUNTY under 28 CFR Sections 35.130, 35.133, 35.149 through 35.151, 35.160, 35.161 and 35.163. Failure to do so could result in the termination of this Agreement.

ARTICLE 14 – CANCELLATION FOR CONFLICT OF INTEREST

This Contract is subject to the provisions of A.R.S. §38-511 which provides in pertinent part:

"The state, its political subdivisions or any department of either may, within three years after its execution, cancel any contract, without penalty or further obligation, made by the state, its political subdivisions, or any of the departments or agencies of either if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the state, its political subdivisions or any of the departments or agencies of either is, at any time, while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract."

ARTICLE 15 – TERMINATION OF CONTRACT FOR DEFAULT

- A. Upon a failure by CONSULTANT to cure a default under this Contract within ten (10) days of receipt of notice from COUNTY of the default, COUNTY may, in its sole discretion, terminate this Contract for default by written notice to CONSULTANT. In this event, COUNTY may take over the work and complete it by Contract or otherwise. CONSULTANT and its sureties, if any, will be liable for any damage to COUNTY resulting from CONSULTANT'S default, including any increased costs incurred by COUNTY in completing the work.
- B. The occurrence of any of the following constitutes an event of default:
 - 1. Abandonment of or refusal or failure to prosecute the work or any separable part thereof with the diligence that will insure completion within the time specified in this Contract, including any extension, or a failure to complete the work (or the separable part of the work) within the specified time;
 - 2. Persistent or repeated refusal or failure to supply enough properly skilled workers or materials to perform the work on schedule;
 - 3. Failure to provide competent supervision at the site;

4. Failure to take down, rebuild, repair, alter or amend any defective or deficient work, or to remove any defective or deficient Material
 5. Failure to make prompt payment to SUBCONSULTANTS or suppliers for material or labor;
 6. Loss of CONSULTANT'S business or other required license or authority, or any curtailment or cessation for any reason of business or business operations that would substantially impair or preclude CONSULTANT'S performance of this Contract;
 7. Disregard of laws, ordinances, or the instructions of COUNTY or its representatives, or any otherwise substantial violation of any provision of the Contract; or
 8. If a voluntary or involuntary action for bankruptcy is commenced with respect to CONSULTANT, or CONSULTANT becomes insolvent, makes a general assignment for the benefit of creditors, or has a receiver or liquidator appointed in respect of its assets.
- C. In the event of a termination for default:
1. All finished and unfinished as-builts, shop drawings, documents, data, studies, surveys, drawings, photographs, reports and other information in whatever form, including electronic, acquired or prepared by CONSULTANT for this project become COUNTY'S property and will be delivered to COUNTY not later than five (5) business days after the effective date of the termination;
 2. COUNTY may withhold payments to CONSULTANT arising under this or any other Contract for the purpose of set-off until such time as the exact amount of damage due COUNTY from CONSULTANT is determined; and
 3. Subject to the immediately preceding subparagraph (2), COUNTY'S liability to CONSULTANT will not exceed the reasonable value of work satisfactorily performed prior to the date of termination for which payment has not been previously made.
- D. The Contract will not be terminated for default nor CONSULTANT charged with damages under this Article, if—
1. Excepting item (8) in paragraph B above, the event of default or delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of CONSULTANT. Examples of such causes include—
 - (i) Acts of God or of the public enemy,
 - (ii) Acts of the COUNTY in either its sovereign or contractual capacity,
 - (iii) Acts of another consultant in the performance of a Contract with the COUNTY,
 - (iv) Fires,
 - (v) Floods,
 - (vi) Epidemics,
 - (vii) Quarantine restrictions,
 - (viii) Strikes,
 - (ix) Freight embargoes,
 - (x) Unusually severe weather, or
 - (xi) Delays of SUBCONSULTANTS or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both CONSULTANT and the SUBCONSULTANTS or suppliers; and
 2. CONSULTANT, within three (3) days from the beginning of any event of default or delay (unless extended by COUNTY), notifies COUNTY in writing of the cause(s) therefor. In this circumstance, COUNTY will ascertain the facts and the extent of the resulting delay. If, in the judgment of COUNTY, the findings warrant such action, the time for completing the work may be extended.
- E. For the purposes of paragraph A above, "receipt of notice" includes receipt by hand by CONSULTANT'S onsite project manager, facsimile transmission, or under the Notices clause of this Contract.
- F. If, after termination of the Contract for default, it is determined that the CONSULTANT was not in default, or that the delay was excusable, the rights and obligations of the Parties will be the same as if the termination had been issued for the convenience of the COUNTY.
- G. The rights and remedies of COUNTY in this Article are cumulative and in addition to any other rights and remedies provided by law or under this Contract.

ARTICLE 16 – TERMINATION FOR CONVENIENCE OF COUNTY

COUNTY may terminate this Contract at any time by giving written notice to CONSULTANT of such termination and specifying the effective date thereof, at least fifteen (15) days before the effective date of such termination. In that event, all finished or unfinished documents and other materials will, at the option of COUNTY, become its property. If COUNTY terminates the Contract as provided herein, COUNTY will pay CONSULTANT an amount based on the time and expenses incurred by CONSULTANT prior to the termination date. However, COUNTY will make no payment for anticipated profit on unperformed services.

ARTICLE 17 – NON-APPROPRIATION OF FUNDS

Notwithstanding any other provision in this Contract, COUNTY may terminate this Contract if for any reason the Pima County Board of Supervisors does not appropriate sufficient monies for the purpose of maintaining this Contract. In the event of such termination, COUNTY has no further obligation to CONSULTANT, other than payment for services rendered prior to termination.

ARTICLE 18 – NOTICES

Any notice required or permitted to be given under this Contract will be in writing and will be served by delivery or by certified mail upon the other party as follows:

COUNTY:

Lisa Josker, Interim Director
Facilities Management
150 W. Congress, 3rd Floor
Tucson, AZ 85701
Tel: (520) 724-3104
Fax: (520) 724-3900

CONSULTANT:

Phillip Swaim, AIA, Principal
Swaim Associates, Ltd.
7350 E. Speedway Blvd. #210
Tucson, AZ 85710
Tel: (520) 326-3700
Fax: (520) 326-1148

ARTICLE 19 – OTHER DOCUMENTS

CONSULTANT and COUNTY in entering into this Contract have relied upon information provided in CONSULTANT'S response to a request for fee proposal. These documents are hereby incorporated into and made a part of this Contract as if set forth in full herein, to the extent not inconsistent with the provisions of this Contract. CONSULTANT will perform services in accordance with the terms of the Contract and at a level of care consistent with prevailing industry standards. In the event any provision of this Contract is inconsistent with those of any other document, the Contract provisions will prevail.

ARTICLE 20 – REMEDIES

Either party may pursue any remedies provided by law for the breach of this Contract, provided, however, that the procedures in ARTICLE 24 are first exhausted. No right or remedy is intended to be exclusive of any other right or remedy and each is cumulative and in addition to any other right or remedy existing at law or at equity or by virtue of this Contract.

ARTICLE 21 – SEVERABILITY

Each provision of this Contract stands alone, and any provision of this Contract found to be prohibited by law is ineffective to the extent of such prohibition without invalidating the remainder of this Contract.

ARTICLE 22 – BOOKS AND RECORDS

CONSULTANT will keep and maintain proper and complete books, records and accounts, which will be open at all reasonable times for inspection and audit by duly authorized representatives of COUNTY.

CONSULTANT will retain all records relating to this Contract at least five (5) years after its termination or cancellation or until any related pending proceeding or litigation has been closed, if later. Alternatively, CONSULTANT may, at its option, deliver such records to COUNTY for retention.

ARTICLE 23 – DELAYS

Neither party hereto is in default in the performance of its obligations hereunder to the extent that the performance of any such obligation is prevented or delayed by any cause, existing or future, which is beyond the reasonable control of such party.

ARTICLE 24 – DISPUTES

In the event of a dispute between COUNTY and CONSULTANT regarding any part of this Contract or the Parties' obligations or performance hereunder, either Party may request a special meeting between their respective representatives to resolve the dispute. If the dispute remains unresolved, then either Party may request escalation of the issue to a meeting between the Director of the Pima County Department administering this Contract and CONSULTANT'S counterpart official, such meeting to be held within one week of the request, unless otherwise agreed. If the dispute is still not resolved after that meeting, then either Party may pursue such remedy or remedies as may be available to them under the laws of the State of Arizona.

The Parties will continue performance of their respective obligations under this Contract notwithstanding the existence of any dispute.

ARTICLE 25 – OWNERSHIP OF DOCUMENTS

All original drawings, field data, estimates, field notes, plans, specifications, documents, reports, calculations, and other information developed by CONSULTANT under this Contract vest in and become the property of COUNTY and will be delivered to COUNTY upon completion or termination of the services, but CONSULTANT may retain and use copies thereof. COUNTY agrees that the material will not be used for any project other than the project for which it was designed without the express permission of CONSULTANT.

ARTICLE 26 – PUBLIC INFORMATION

Pursuant to A.R.S. § 39-121 et seq., and A.R.S. §§ 34-603(H), 604(H), in the case of construction or Architectural and Engineering services procured under A.R.S. Title 34, Chapter 6, all information submitted by CONSULTANT in any way related to this Contract, including, but not limited to, pricing, product specifications, work plans, and any supporting data becomes public information and upon request, is subject to release and/or review by the general public including competitors.

Any information submitted related to this Contract that CONSULTANT believes constitutes proprietary, trade secret or otherwise confidential information must be appropriately and prominently marked as CONFIDENTIAL prior to submittal to COUNTY and be accompanied by an index specifically identifying and describing the general contents of each page so marked. The index is a public record and should not include any information considered confidential.

Notwithstanding the above provisions, in the event records marked CONFIDENTIAL are requested for public release pursuant to A.R.S. § 39-121 et seq., COUNTY will release records marked CONFIDENTIAL ten (10) business days after the date of notice to CONSULTANT of the request for release, unless CONSULTANT has, within the ten (10) day period, secured a protective order, injunctive relief or other appropriate order from a court of competent jurisdiction, enjoining the release of the records. For the purposes of this paragraph, the day of the request for release is not counted in the time calculation. CONSULTANT will be notified of any request for such release on the same day of the request for public release or as soon thereafter as practicable.

COUNTY will not, under any circumstances, be responsible for securing a protective order or other relief enjoining the release of records marked CONFIDENTIAL, nor will COUNTY be in any way financially responsible for any costs associated with securing such an order.

ARTICLE 27 – LEGAL ARIZONA WORKERS ACT COMPLIANCE

CONSULTANT hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to CONSULTANT'S employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). CONSULTANT will further ensure that each SUBCONSULTANT who performs any work for CONSULTANT under this Contract likewise complies with the State and Federal Immigration Laws.

COUNTY has the right at any time to inspect the books and records of CONSULTANT and any SUBCONSULTANT in order to verify such party's compliance with the State and Federal Immigration Laws.

Any breach of CONSULTANT'S or any SUBCONSULTANT'S warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, is a material breach of this Contract subjecting CONSULTANT to penalties up to and including suspension or termination of this Contract. If the breach is by a SUBCONSULTANT, and the subcontract is suspended or terminated as a result, CONSULTANT will take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or to retain a replacement SUBCONSULTANT (subject to COUNTY approval if SBE or DBE preferences apply), as soon as possible so as not to delay project completion.

CONSULTANT will advise each SUBCONSULTANT of COUNTY'S rights, and the SUBCONSULTANT'S obligations, under this Article by including a provision in each subcontract substantially in the following form:

^a"SUBCONSULTANT hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to SUBCONSULTANT'S employees, and with the requirements of A.R.S. § 23-214 (A). SUBCONSULTANT further agrees that COUNTY may inspect the SUBCONSULTANT'S books and records to insure that SUBCONSULTANT is in compliance with these requirements. Any breach of this paragraph by SUBCONSULTANT is a material breach of this contract subjecting SUBCONSULTANT to penalties up to and including suspension or termination of this contract."

Any additional costs attributable directly or indirectly to remedial action under this Article are the responsibility of CONSULTANT. In the event that remedial action under this Article results in delay to one or more tasks on the critical path of CONSULTANT'S approved construction or critical milestones schedule, such period of delay will be excusable delay for which CONSULTANT is entitled to an extension of time, but not costs.

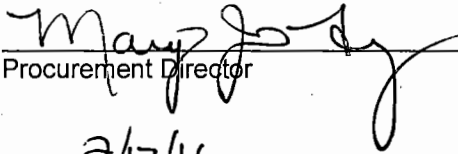
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ARTICLE 28 – ENTIRE AGREEMENT

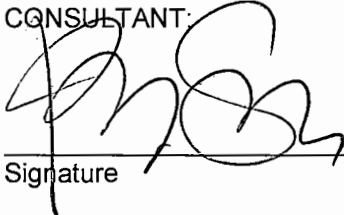
This document constitutes the entire agreement between the Parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein. This Contract may be modified, amended, altered or extended only by a written Amendment signed by the Parties.

IN WITNESS WHEREOF, the Parties have affixed their signatures to this Contract on the dates written below.

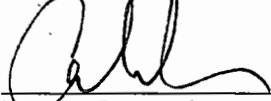
APPROVED:


Procurement Director
2/17/16
Date

CONSULTANT:


Signature
PAUL SHAM, PRESIDENT
Name and Title (Please Print)
2/12/16
Date

APPROVED AS TO FORM:


Deputy County Attorney

ANDREW FLAGG
Name (Please Print)

2/11/2016
Date

**PIMA COUNTY FACILITIES MANAGEMENT
DESIGN & CONSTRUCTION DIVISION**

150 W. Congress Street | 3rd Floor | Tucson, Arizona | 85701

Tel: 520-724-3085 | Fax: 520-724-3900

SCOPE OF PROFESSIONAL SERVICES REQUIRED

DATE: January 2016
PROJECT NAME: Project Curvature
BUILDING NAME: World View Facility
BUILDING ADDRESS: 1805 E Aerospace Parkway, Tucson, Arizona
PROJECT MANAGER: Carter L. Volle
TELEPHONE: 520 / 724-3303

A. SCOPE OF SERVICES TO BE PROVIDED BY THE CONSULTANT

1. General Provisions:

The Scope of Professional Services shall include all professional services required to design and construct the Project.

All work shall be performed by persons licensed in the State of Arizona for the type of Professional Services required, or by persons under direct supervision of the licensed Professional, for which the Licensed Professional(s) assumes responsibility. The names of the licensed Professional(s) shall be supplied. They shall be responsible for the drawings and specifications pertaining to the Professional Services they provide, by sealing and signing all drawings and specifications for which they are responsible.

The COUNTY lacks the available expertise for the Project, and has therefore, by this Agreement, employed the CONSULTANT. Written approval of plans, specifications, and reports by the Board of Supervisors is only for conformance with the program design concept of the Project. This approval does not imply approval of nor attest to the accuracy, suitability, or completeness of the design, drawings, dimensions, details, proper selection of materials, nor compliance with applicable codes or ordinances. Such accuracy, suitability, or completeness is the sole responsibility of the CONSULTANT for the Project.

If a responsive Guaranteed Maximum Price for construction of the Project is not received for an amount within the construction budget, the CONSULTANT shall, in consultation with the COUNTY, revise the scope and/or quality of the project to obtain a satisfactory proposal to construct the project in accordance with A.R.S. 34-104, at no additional cost to the COUNTY, unless otherwise agreed upon by the COUNTY.

The CONSULTANT shall prepare minutes of all meetings in the design phase between the COUNTY, and the CONSULTANT, for review and approval by the COUNTY.

During the design phase of the project the CONSULTANT shall prepare a Master Project Schedule to encompass the entire project including the construction phase for review and approval by the COUNTY. The CONSULTANT shall develop the baseline project schedule in Microsoft Project 2007 format or newer. CONSULTANT shall then be responsible to maintain and update the schedule on a monthly basis until construction begins. Along with the schedule the CONSULTANT shall provide progress reports to the COUNTY's project manager on a bi-monthly basis throughout the Pre-Design and Design Services. The CONSULTANT shall submit each schedule revision to the COUNTY for review and approval.

2. Project Background:

Pima County purchased land south of Raytheon to prevent residential encroachment that would threaten the viability of this test site. The area was planned for an Aerospace, Defense, & Technology Research and Business Park. A new road has been constructed across the northern portion of the property with a new entry road to Raytheon's south entrance providing access to land that previously had no access. Focus of this Research & Business Park is on significant employers with related Aerospace, Defense or Technology products or research with pay scales greater than the regional average. As with many employment centers, the first facility built is a draw for others to come. This project meets all of the criteria for the business park and will result in a general purpose manufacturing facility with limited office space and will be the first facility located in the Park.

3. Project Narrative:

To develop a general purpose manufacturing facility that will accommodate a broad range of uses, that is cost effective to operate, that can be repurposed over time as needed for various users should the planned user outgrow the facility. Include appropriate attached equipment and infrastructure to properly function as a manufacturing facility. Incorporate a tower with crane facilities to accommodate special uses. Due to critical scheduling needs, the facility needs to be operational by November, 2016.

Construct a 120,000 sq. ft. steel frame structure with appropriate access, loading docks, and equipment parking facilities to accommodate light manufacturing operations. Facility will include a 15,000 to 20,000 Sq. Ft. mezzanine within the structure for office and support operations. Appropriate site work for parking, storage and a launch pad as well as utility access to the building must be included. Construct a 700' launch Pad north of the building on 17+ acres of County property and an appropriate distance from any major vertical structures to be used to launch balloon and other permitted vehicles in accordance with FAA and Air Traffic Control specifications. The launch pad will be available for commercial use per regulations established by Pima County.

As a part of the development of the Aerospace, Defense, and Technology Research and Business Park, this facility will provide a site for the location of an International space flight firm that will attract approximately 450 high paying jobs over the next 5 years. The creation of a significant balloon and other vehicle launch pad will establish an attraction for other space flight companies and suppliers to come to the area with similar staffing levels and pay scales. The launch pad will also be accessible to Raytheon and other aerospace related companies.

4. Project Team:

The project team will be made up of representatives from:

- Pima County Administrator's Office
- World View Personnel
- Pima County Project Management Office
- Pima County Facilities Management
- Pima County Department of Transportation
- Pima County Regional Wastewater Reclamation Department
- Swaim Associates LTD Architects AIA

5. Estimated Budget & Cost Control

The total project budget shall not exceed **\$16,500,000**, which includes approximately \$11,660,000 available for construction by the General Contractor. The construction delivery method is Construction manager at Risk (CMAR).

The CONSULTANT is responsible to maintain the project's design within the construction budget. The cost estimator needs to be well aware of construction costs with the southern Arizona market. Cost estimating will be done by the CMAR at various stages of design. If necessary the CONSULTANT shall recommend value-engineering items, scope changes, and add alternates for COUNTY review and approval. If changes need to occur to the design documents in order to get the design within budget, including new cost estimate/s, this work shall be at no expense to the COUNTY.

6. Project Schedule:

- a. Design through Construction in multiple phases – Eleven months
- b. Construction through Substantial Completion – Nine months overlapping with Design & Construction Documents.

The master project schedule shall be developed in association between the CONSULTANT, COUNTY and Project Team.

7. Architectural & Engineering Services Phases:

The project will be on a fast track schedule to include the following overlapping design and construction packages:

- Grading
- Site Development
- Metal Building
- Foundations
- Core and Shell
- Interiors

The CONSULTANT shall also provide any and all presentation materials, which may include the following: presentation boards, color and material finish boards, Power Point presentations etc. Provide separate line items in the fee proposal.

These Design services shall include (not limited to) the following as required:

- Architectural Services
- Civil Engineering
- Landscape Design
- Structural Engineering
- Mechanical Engineering
- Plumbing Engineering
- Fire Protection Delegated Design
- Fire Alarm Engineering
- Electrical Engineering
- Communications Engineering
- Building and room identification signage

Interior design and furniture and equipment design services will be supplied by Pima County Facilities Management and coordinated with the architect for inclusion into the construction documents. This includes finish material and color selections. Finish material specifications shall be provided by the CONSULTANT.

8. Pre-Design Services Detail:

a. Programming:

At the award of this contract, the CONSULTANT shall meet with the project partners to verify the program and the functional needs of the new space. Any previously developed building program will be given to the consultant at the time of award.

9. Design Services Detail:

a. Applicable Codes and Regulations:

The CONSULTANT shall comply with all applicable codes and regulations as defined by Pima County Development Services and the Arizona State Fire Marshal.

The CONSULTANT shall assist the COUNTY with obtaining a building permit with Pima County Development Services.

The CONSULTANT shall assist the COUNTY with submission to the Arizona State Fire Marshal for permit as applicable.

b. Schematic Design Phase:

Upon the COUNTY written approval of the Project Program, the CONSULTANT shall proceed to the Schematic Design Phase of the Project, which consists of drawings, outline specifications, calculations and other documents, which establish the general, scope, conceptual design, scale and relationships between components, and any other preliminary concern specific to the Project. Documentation for the Schematic Design Phase shall be prepared in sufficient detail and technical calculation necessary to proceed to the Design Development Phase of the Project.

Approval of the Schematic Design Phase by the COUNTY is necessary before proceeding on to the Design Development Phase of the Project.

c. Design Development Phase:

The CONSULTANT shall proceed with the Design Development Documents, only on written approval by the COUNTY. This Phase consists of drawings and other documents necessary to describe the size and character of the entire Project as to architectural, structural, mechanical, plumbing and electrical systems, materials, and such other disciplines and essentials as may be appropriate. Design Development Documents shall be submitted to the COUNTY for review and approval.

The CONSULTANT shall conduct an in-house quality review session with the design team prior to submission to the COUNTY. A document review session will be held with the COUNTY, Project team and the CONSULTANT's team. The submittal shall consist of PDF and AutoCad formats with specific details of the submittal, in terms of numbers and sizes of copies, as determined by the COUNTY prior to the submittal. The CONSULTANT shall prepare and submit a written response to each of the COUNTY's review comments at this time.

d. Construction Document Phase:

The CONSULTANT shall develop from the Design Development phase the Construction Document submission to be submitted by the COUNTY's Project Manager for obtaining the building permits and beginning the procurement process to obtain a General Contractor and furniture procurement. This submission includes drawings and full specifications, calculations and product cut sheets, setting forth in detail the requirements for the construction of the entire Project, including coordination of the various

applicable disciplines. The CONSULTANT shall conduct an in-house quality review session prior to submission to the COUNTY.

At the time of submission for building permit, the CONSULTANT shall coordinate with the COUNTY Project Manager what is required to be delivered to the permit authorities.

The CONSULTANT shall provide the COUNTY with all required documentation for submittal for the Construction Permit, or any other permits, or review processes required by said governmental authorities. These documents shall include completed permit applications, checklists, CONSULTANT Consent Form, plans, specifications, special inspection certificates (if necessary) and calculations. The COUNTY will submit these documents to Development Services and other agencies for permit review.

The CONSULTANT must receive from the COUNTY's Project Manager's written approval of the Completed Construction Documents before proceeding to the next phase. Upon approval of the submittal, CONSULTANT shall make any required changes during the GMP Phase by Addendum/Addenda.

e. GMP Phase:

The CONSULTANT shall assist the COUNTY in answering any questions that may arise from subcontractor bidders pertaining to the Construction Documents. Should Addenda become necessary, the CONSULTANT shall prepare and distribute same with direction provided by the COUNTY's Project Manager.

The CONSULTANT shall attend conferences held by the CMAR to assist the COUNTY in evaluating Guaranteed Maximum Pricing being provided by the CMAR

f. Construction Administration Phase of the Construction Contract:

Whenever the term "Contract" is used herein, it shall mean the Construction Contract awarded by the Board of Supervisors of Pima County, Arizona, and as the same may hereinafter be amended with approval of both parties after review by the CONSULTANT.

The term "Contractor" as used herein shall mean the party entering into a contract with COUNTY for the construction of the Project defined by the Construction Documents.

CONSULTANT's Construction Administration Phase shall commence with the notice-to-proceed to the General Contractor and will terminate Sixty (60) days following issuing of the Certificate of Substantial Completion. CONSULTANT's Construction Administration Services, beyond the completion time period specified above, unless due to the neglect of the CONSULTANT shall require specific written approval by the COUNTY by written amendment to this agreement.

The CONSULTANT shall provide administration of the Construction Contract as set forth in the Construction Contract and General Conditions of the Owner-Contractor Construction Contract. The extent of the CONSULTANT duties and responsibilities and the limitations of his authority as assigned thereunder shall not be modified without the written consent of the CONSULTANT, and that of the COUNTY.

The CONSULTANT, as the representative of the COUNTY during the Construction Phase, shall advise and consult with the COUNTY. All of the COUNTY instructions to the Contractor shall be issued through the CONSULTANT. The CONSULTANT shall have authority to act on behalf of the COUNTY to the extent provided in this Agreement, the Construction Contract, and the General Conditions, unless otherwise modified in writing.

The CONSULTANT shall at all times have access to the Work whenever it is in preparation or progress.

The CONSULTANT shall make sufficient visits to the site so as to ascertain the progress and quality of the Work and to determine if the Work is proceeding in accordance with the Contract Documents. SUB-

CONSULTANTS to the CONSULTANT shall also furnish periodic written records of their inspection of the Work, which shall be submitted to the COUNTY, through the CONSULTANT, for the COUNTY files.

The CONSULTANT shall chair a weekly construction meeting on site with Contractor and the COUNTY and provide written minutes of the meetings to all attendees.

The CONSULTANT shall not be responsible for construction means, methods, techniques, or procedures in connection with the Work, nor shall he be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents; for the acts or omissions of the Contractor, or Subcontractors agents or employees.

However, the CONSULTANT shall immediately notify the COUNTY if the Contractor is failing to carry out the work in accordance with the Contract Documents, and shall immediately notify the Contractor of work not in compliance with the Contract Documents. The CONSULTANT shall prepare a list of critical construction inspection times and items to be inspected, and said schedule shall be made part of the successful Contractor's required performance.

Notwithstanding any provisions of previous paragraphs, and based on such observations at the site and on the Contractor's Applications for Payment, the CONSULTANT shall determine the amount owing to the Contractor and certify the payment of such amounts on the Contractor's Applications for Payment (AIA Form G-702).

The Certification of the Application for Payment shall constitute a representation by the CONSULTANT to the COUNTY based on the CONSULTANT's observations of the site and on the data comprising the Application for Payment, that the Work has progressed to the point indicated; that to the best of the CONSULTANT's knowledge, information and belief, that the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole upon Substantial Completion; to the results of any subsequent tests required by the Contract Documents; to minor deviations from the Contract Documents correctable prior to completion; and to the specific qualifications stated in the Certificate for Payment) and that the Contractor is entitled to payment in the amount certified. When the Contractor has made proper application therefore, the CONSULTANT shall forward the certified Application for Payment to the COUNTY.

The CONSULTANT may decline to approve an Application for Payment and may withhold the Application in whole or in part, if in the CONSULTANT's opinion he is unable to make representations to COUNTY as provided in the above paragraph. The CONSULTANT may also decline to approve any Applications for Payment, or, because of subsequently discovered evidence or subsequent inspections, he may nullify the whole or any part of any Certificate for Payment previously issued to such extent as may be necessary in his opinion to protect the COUNTY from loss because of:

Defective work not remedied, or;

Claims filed, or reasonable evidence indicating probable filing of claims, or;

Failure of the Contractor to make payments to sub-contractors for labor, materials or equipment, or;

Reasonable doubt that the Work can be completed for the unpaid balance of the Contract Sum, or;

Damage to another contract, or;

Reasonable indication that the Work will not be completed within the Contract Time, or;

Unsatisfactory execution of the Work by the Contractor.

When the above grounds are removed, payment shall be made for amounts withheld because of them.

The CONSULTANT may, on request, and at his discretion, furnish to any sub-contractor, if practicable, information regarding percentages of completion certified by the Contractor on account of Work done by such sub-contractors.

The CONSULTANT shall be, in the first instance, the interpreter of the requirements of the Contract Documents and of the performance there under by both the COUNTY and Contractor. The CONSULTANT shall recommend decisions on all claims from the COUNTY or Contractor relating to the execution and progress of the work on all other matters or questions related thereto.

CONSULTANT shall provide, as part of his Construction Administration services, Special Inspections if the Construction Documents, laws, ordinances, etc., of any public authority require any work to be specifically tested or approved, or if the CONSULTANT deems such testing or approval necessary, he shall make inspections of the Work and materials after notice from the Contractor of its readiness for inspection. Inspection by the CONSULTANT shall be promptly made and where practicable at the source of supply.

The CONSULTANT shall have the authority to reject Work, which does not conform to the Contract Documents, and to require, if in his opinion necessary, special inspection or testing of any Work at any stage of progress. The CONSULTANT shall also notify the COUNTY of the necessity to require the Contractor to stop the Work whenever, in his opinion, it may be necessary for the proper performance of the Contract. The COUNTY, when necessary, shall issue the order to stop the Work.

The CONSULTANT shall review and approve shop drawings, samples, and other submissions of the Contractor with reasonable promptness. The CONSULTANT shall furnish any requested additional instructions in writing, by means of drawings, or otherwise, necessary for the proper execution of the Work. All such instructions or drawings shall be consistent with the Contract Documents, true developments thereof, and reasonably inferable therefrom.

The CONSULTANT shall make minor changes in the Work not involving extra cost, delay, or claim of any kind against the COUNTY and/or Contractor, and not inconsistent with the purposes of the Project. Otherwise, except in an emergency endangering life or property, the CONSULTANT shall prepare and process no extra work or change except by WRITTEN approval and Change Order signed by the COUNTY. The CONSULTANT shall review and respond to said Change Orders as well as any Request for Proposals to the Contractor.

The CONSULTANT shall produce, and determine, the date of issuance of the Certificates of Substantial Completion and Final Completion shall receive written guarantees, waiver of liens, and related documents assembled by the Contractor, and shall issue a final Certificate for Payment.

At the conclusion of the Project, the CONSULTANT shall prepare a Record Drawing Package (electronic pdf and AutoCad as-built drawings) formatted per requirements of the COUNTY at the time of submission. In addition, key shop drawings are to be scanned and submitted to the owner as part of the closeout documents.

B. SCOPE OF SERVICES TO BE PROVIDED BY PIMA COUNTY

COUNTY shall provide the following items and services in support of the CONSULTANT'S work:

1. Cost of reproductions for all documents as listed in the Contract, which are used for meetings with COUNTY representatives, and as requested by the COUNTY's Project Manager. Reproduction costs which are used for coordination purposes between the CONSULTANT's team members will not be paid for by the COUNTY.
2. Cost of reproductions for all documents required for bidding and construction, shall be with vendors having a purchase order with the COUNTY.
3. Cost of materials testing (as needed) based on Project requirements defined by CONSULTANT;

4. A Project Manager from Facilities Management assigned to work with the CONSULTANT.
5. Any information available regarding utilities and services, or any other project specific information as required. This does not limit or negate the requirement of the CONSULTANT to verify the field conditions;
6. Any reports and/or mitigation regarding the presence of hazardous materials on the property. In the event that hazardous materials are encountered, the COUNTY will contract directly with Abatement Consultants and Contractors for remediation, should that be necessary;
7. Assistance with establishment of CAD files and formats as defined in the attached Facilities Management Department CAD Standards;
8. Any building Materials and Finishes Standards desired by the COUNTY;
9. Apply for and pay building permit fees to include Pima County Wastewater fees.
10. Interior design and furniture and equipment design services will be supplied by Pima County Facilities Management.
11. Consultation with Pima County officials as required.

Exhibit 2
Amendment 1 to Swaim Associates, Ltd.

PIMA COUNTY FACILITIES MANAGEMENT DEPARTMENT

PROJECT: Project Curvature

CONSULTANT: Swaim Associates, Ltd.
7350 E. Speedway Blvd., #210
Tucson, AZ 85710

CONTRACT NO.: CT-FM-16-237

AMENDMENT NO.: One (1)

FUNDING: Certificates of Participation- 2016

CONTRACT

NO. CT-FM-16-237

AMENDMENT NO. 01

This number must appear on all
invoices, correspondence and
documents pertaining to this
contract.

CONTRACT TERM: 01/19/16- 02/28/17

TERMINATION PRIOR AMENDMENT: -

TERMINATION THIS AMENDMENT: 02/28/18

ORIGINAL CONTRACT AMOUNT: \$ 726,595.00

PRIOR AMENDMENT(S): -

AMOUNT THIS AMENDMENT: -

REVISED CONTRACT AMOUNT: \$ 726,595.00

CONTRACT AMENDMENT

WHEREAS, COUNTY and CONSULTANT entered into the Contract referenced above for Architectural and Engineering Design Services for the project referenced above; and

WHEREAS, additional time is needed to allow for completion of project closeout tasks as well as continuing design consultant availability to assist with issues which may arise during the purchase and installation of remaining equipment and signage; and

WHEREAS, COUNTY and CONSULTANT, pursuant to ARTICLE 1 - TERM AND EXTENSION/RENEWAL/CHANGES, have agreed to extend the Contract term.

NOW, THEREFORE, it is agreed as follows:

CHANGE: ARTICLE 1 - TERM AND EXTENSION/RENEWAL/CHANGES, as follows:

FROM: "This Contract ...terminates on February 28, 2017..."

TO: "This Contract ...terminates on February 28, 2018 ..."

This Amendment shall be effective on February 21, 2017.


All other provisions of the Contract, not specifically changed by this Amendment, shall remain in effect and be binding upon the parties.

APPROVED:


Chair, Board of Supervisors

FEB 21 2017
Date

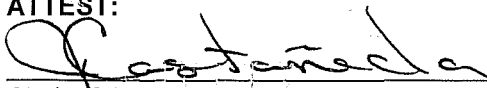
CONSULTANT:


Signature

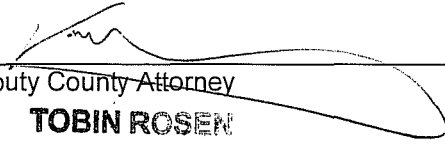
SAMUEL MARLET, VICE PRESIDENT
Name and Title (Please Print)

2/3/2017
Date

ATTEST:


Clerk of the Board

APPROVED AS TO FORM:


Deputy County Attorney
TOBIN ROSEN

Name (Please Print)

2/3/17
Date

Exhibit 3

Pima County Contract with Barker Morrissey Contracting Inc.

PIMA COUNTY FACILITIES MANAGEMENT DEPARTMENT		CONTRACT	
PROJECT:	Construction Manager at Risk Services For Project Curvature (XPCWV1)	NO.	<u>CT-FM-16-241</u>
CONTRACTOR:	Barker Morrissey Contracting, Inc. 2127 E Speedway Blvd., #101 Tucson, AZ 85719	AMENDMENT NO.	_____
AMOUNT:	\$101,475.00	This number must appear on all invoices, correspondence and documents pertaining to this contract.	
FUNDING:	Certificates of Participation- 2016	(stamp here)	

CONSTRUCTION MANAGER AT RISK

THIS CONTRACT is entered into between Pima County, a body politic and corporate of the State of Arizona, hereafter called COUNTY, and Barker Morrissey Contracting, Inc., hereafter called "CMAR" or "CONTRACTOR", individually, and collectively described as a "Party" or the "Parties", respectively.

WITNESSETH

WHEREAS, COUNTY requires the services of a Construction Manager at Risk (CMAR) to perform Pre-construction Services and, upon mutual agreement of the Parties, Construction Services for the above-named Project (hereafter the Project); and

WHEREAS, COUNTY requires CMAR to participate as a member of the Project Team, consisting of CMAR, the selected Design Professional(s), and COUNTY during Preconstruction and other required phases of the Project; and

WHEREAS, CMAR has represented to COUNTY that CMAR has the requisite skill, expertise and resources to provide Construction Manager at Risk services and to construct the Project; and

WHEREAS, due to CMAR's past experience and knowledge specific to this project, it was determined under the emergency procurement provisions of A.R.S. §34-606 and Pima County Code 11.20.060 that a competitive procurement for this project would be contrary to the COUNTY's interests; and

WHEREAS, at its regularly scheduled meeting on January 19, 2016, the Board of Supervisors approved the award of the Contract to CMAR and approved the Procurement Director to sign this Contract as well as future amendments to the Contract; and

WHEREAS, COUNTY intends to negotiate with CMAR regarding general conditions, construction fees, and other elements of the Guaranteed Maximum Price (GMP) for construction.

NOW, THEREFORE, the Parties hereto agree to the following:

ARTICLE 1 – TERM

This Contract, as approved by the Board of Supervisors, commences on January 19, 2016 and terminates on February 28, 2017, unless sooner terminated or further extended for Project completion. COUNTY may, with written notice to CMAR, extend this Contract for such additional period or periods as may be required for Project completion.

ARTICLE 2 - SCOPE OF WORK

- A.** CMAR will perform all needed services in the Pre-construction and per amendment to this Contract, Construction Services Phases of the Project, and provide all material, equipment, tools, and labor necessary to satisfactorily complete all Work, deliverables and services described in and reasonably inferable from the Contract Documents (collectively "Scope of Work", "Project Work" or "the Work"), as more fully described in **Exhibit "A" Scope of Work (4 pages)**, to this Contract. This Contract covers only

Preconstruction Services and is not effective as a Contract for Construction Phase services until such time as the Parties agree on a Guaranteed Maximum Price (GMP), including CMAR's Construction Phase Fee, and incorporate those terms into this Contract by Amendment.

- B. COUNTY has retained CMAR to provide construction and costing expertise as part of the Project Team. The Project Team's goal is to deliver a quality Project, on schedule, at or below budget that meets COUNTY's needs. CMAR understands, therefore, that active participation and contribution of its expertise in Pre-construction is critical to the success of the Project and is the essence of this agreement for Preconstruction Services. In furtherance thereof, CMAR will take leadership in the development of the cost model and schedule for design and construction of the Project and commits to actively participate in design meetings and reviews and apply its best expertise and knowledge to identify and recommend alternatives to advance the Project. The use of terms like "constructability review" or "value engineering" to describe activities expected of CMAR is not meant to imply that CMAR will only provide after-the-fact design reviews. CMAR will actively contribute its expertise in advance of and during design on an ongoing basis and design will be accomplished collaboratively. The Parties desire to avoid a process of designing, reviewing, and redesigning the Project.
- C. CMAR will provide scheduling, budget and cost expertise as part of the Preconstruction team. CMAR's experts must be able to advise and render opinions to the team on a near real-time basis concerning impacts to the Project budget and schedule arising from proposed design alternatives or design options being explored during the design process. The Project Team will use this advice to help decide if proposed alternatives or options should be pursued. Nothing in this **Article 2** requires that CMAR provide design services.
- D. CMAR will develop detailed Project construction estimates, study labor conditions, research and provide advice regarding materials, alternatives, methods, means, constructability, and sequencing and otherwise contribute to the advancement and development of the Project throughout the Pre-construction phase. CMAR will update and refine the cost model as design progresses. CMAR will actively track estimated construction costs throughout Preconstruction Services Phase and will advise the team any time that the estimated construction costs approach or exceed COUNTY's budget for construction.
- E. At such time during the Preconstruction Services phase that COUNTY directs, CMAR will prepare a cost estimate and provide a GMP for construction of the Project (or for a segment of the Project, if construction is to be in phases) for COUNTY's review and approval. If the GMP proposed by the CMAR is acceptable to COUNTY, the Parties will execute an Amendment to this Contract to incorporate the GMP and supporting documents as may be necessary to define the scope of construction Work covered by the GMP. If the GMP is not within COUNTY's construction budget or the budget for the Project segment, if phased, COUNTY reserves the right to terminate this Contract or act as otherwise provided in **Article 2.3.7.3 of the General Conditions**. Acceptance by COUNTY of one or more phased GMPs does not obligate COUNTY to accept any succeeding GMP.
- F. The Construction Services Phase will begin upon acceptance and execution by COUNTY of CMAR's GMP, or the first GMP in the event of multiple GMPs. Construction will be accomplished in accordance with this Contract, including all Appendices and Exhibits, and the construction documents to be developed under this Contract. CMAR agrees to provide efficient business administration and superintendence, and exercise its best judgment and skill to complete the Project in the most expeditious and economical manner consistent with the best interests of COUNTY.
- G. Changes in the scope or fee for the Preconstruction Services Phase must be accomplished by an amendment to this Contract executed by the Parties. Preconstruction Services costing in excess of the agreed Preconstruction Services fee will be at CMAR's own expense.
- H. COUNTY has the option to request additional Project-related Preconstruction and/or Construction Services within the scope of this Contract.

ARTICLE 3 - PRECONSTRUCTION PHASE FEE AND GUARANTEED MAXIMUM PRICE

- A. COUNTY will pay CMAR a Preconstruction Services Phase Fee for Preconstruction Services. The CMAR's Construction Services Phase Fee, plus the cost of the Work (direct construction cost) plus a contingency, bonds, insurance and taxes (indirect construction costs) will comprise the GMP to be established in

compliance with **Exhibit "B" General Conditions**. Unless otherwise agreed, CMAR's GMP will include all required sales, use, franchise and other taxes in effect on the date of COUNTY approval of the GMP, as well as all applicable bond and insurance costs.

- B. The Preconstruction Services Phase Fee will not exceed One Hundred One Thousand Four Hundred Seventy Five dollars (\$101,475.00) as detailed in CMAR's preconstruction estimate incorporated herein as **Exhibit "B" Attachment 3 (1 page)**. The Construction Services Phase Fee will be a fixed fee, will be set forth in GMP described in **Article 2.E** above and, if approved by COUNTY, will be incorporated into this Contract by Amendment.
- C. If the GMP requires an adjustment due to changes in the Scope of Work during the Construction Services Phase, the cost of such changes will be priced under **Article 10 of the General Conditions**.
- D. For COUNTY-caused construction delays, either agreed to or awarded, CMAR will provide all the necessary extended general conditions for a daily sum as provided for in **Article 10.3 of the General Conditions**.

ARTICLE 4 - PROCEDURE FOR PAYMENT

- A. **Progress Payments:** For Preconstruction Services, CMAR will submit to COUNTY within one (1) week of the last business day of each month CMAR's application for payment based on the percentage completed for each Preconstruction design phase as agreed to by COUNTY. COUNTY will make payment for CMAR's Construction Services in accordance with **Article 7 of the General Conditions**. All construction costs which exceed the GMP and are not authorized by change order are to be paid by the CMAR and not COUNTY.
- B. **Record Keeping and Financial Controls.** With respect to all Work performed by CMAR, its subcontractors and consultants under this Contract, CMAR, its subcontractors and consultants will keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles, and subject to approval by COUNTY. During performance of the Work and for five (5) years after final payment, CMAR will retain and will also require all subcontractors and any consultants to retain for review or audit by COUNTY all correspondence, meeting minutes, memoranda, electronic media, books, accounts, reports, files, time cards, material invoices, payrolls, and evidence of all communications, direct and indirect costs and all other matter related to the Work. Upon request by COUNTY, CMAR will produce a legible copy or the original of any or all such records at any time during or after the Work as COUNTY may request. CMAR will submit to COUNTY, upon request, all payrolls, reports, estimates, records and any other data concerning work performed or to be performed and concerning materials supplied or to be supplied, as well as subcontractor or consultant payment applications or invoices and such subcontractor's or consultant's progress payment checks. The requirements of this section must be provided for in all Contracts between CMAR and its subcontractors and consultants.
- C. **Audit.** For a period of five (5) years from Final Payment under this Contract, COUNTY reserves the right to audit and question any payment made under this Article and to require reimbursement therefor by setoff or otherwise for payments determined to be improper or contrary to the Contract or law.

ARTICLE 5 - CONTRACT TIME

- A. Time is of the essence with respect to the dates and times set forth in the Contract documents. CMAR understands that the time(s) for completion(s) set forth in these Documents are essential to the COUNTY and a material consideration for this Contract.
- B. The Work and Contract time commence within five (5) days of CMAR's receipt of COUNTY's notice to proceed (NTP) unless the Parties agree otherwise in writing.
- C. CMAR will achieve substantial completion of the entire Work (the substantial completion date) no later than November 15, 2016, subject to adjustments in accordance with the Contract Documents.
- D. CMAR will achieve interim milestones and substantial completion of identified portions or phases of the Work, subject to adjustments in accordance with the Contract Documents.

- E. Final Completion.** CMAR will achieve final completion of the entire Work or portion or phase thereof within sixty (60) calendar days after the date established for substantial completion of the entire Work or corresponding portion or phase thereof, unless otherwise agreed in writing.

ARTICLE 6 – INSURANCE

The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. COUNTY in no way warrants that the minimum limits contained herein are sufficient to protect the CMAR from liabilities that arise out of the performance of the work under this Contract. The CMAR is free to purchase additional insurance.

CMAR'S insurance will be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers will have an "A.M. Best" rating of not less than A-VII. COUNTY in no way warrants that the above-required minimum insurer rating is sufficient to protect the CMAR from potential insurer insolvency.

6.1 Minimum Scope and Limits of Insurance:

CMAR will procure and maintain, until all of their obligations have been discharged, coverage with limits of liability not less than those stated below.

- 6.1.1 Commercial General Liability (CGL) – Occurrence Form with limits of \$1,000,000 Each Occurrence and \$2,000,000 General Aggregate. Policy will include bodily injury, property damage, and broad form Contractual liability coverage, and products – completed operations.
- 6.1.2 Business Automobile Liability – Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Contract with a Combined Single Limit (CSL) of \$1,000,000.
- 6.1.3 Workers' Compensation and Employers' Liability - Statutory requirements and benefits. Coverage is compulsory for employers of one or more employees. Employer's Liability - \$500,000.

Note: The Workers' Compensation requirement will not apply to a CONTRACTOR that is exempt under A.R.S. § 23-901, and when such CMAR executes the appropriate COUNTY Sole Proprietor or Independent CMAR waiver form.

- 6.1.4 Builder's Risk Insurance ☒ does ☐ does not apply to this contract. If Builder's Risk Insurance applies to this contract, then the CONTRACTOR shall be required to maintain throughout the course of construction, Builder's Risk Insurance in a dollar amount equal to the full insurable value of the work under contract, which shall include "All Risk" coverage. Pima County shall be named as a "Loss Payee". CONTRACTOR shall be responsible for equipment, materials, and supplies until completion of the project and acceptance by Pima County. Flood and earthquake coverage does not need to be included in the Builder's Risk Insurance.

6.2 Additional Insurance Requirements:

The policies will include, or be endorsed to include, as required by this written agreement, the following provisions:

- 6.2.1 Additional Insured Endorsement: The General Liability and Business Automobile Liability Policies will each be endorsed to include COUNTY, its departments, districts, boards, commissions, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the CMAR.
- 6.2.2 Subrogation Endorsement: The General Liability, Business Automobile Liability and Workers' Compensation Policies will each contain a waiver of subrogation endorsement in favor of COUNTY, and its departments, districts, boards, commissions, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the CONTRACTOR.
- 6.2.3 Primary Insurance Endorsement: The CMAR'S policies will stipulate that the insurance afforded the CMAR will be primary and that any insurance carried by the Department, its agents, officials, employees or COUNTY will be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).
- 6.2.4 Insurance provided by the CMAR will not limit the CMAR'S liability assumed under the indemnification provisions of this Contract.

6.3 Notice of Cancellation:

For each insurance policy required by the insurance provisions of this Contract, the CMAR must provide to COUNTY, within two (2) business days of receipt, a notice if a policy is suspended, voided, or cancelled for any reason. Such notice will be mailed, emailed, hand-delivered or sent by facsimile transmission to Pima County Procurement, 130 West Congress Street, 3rd Floor, Tucson, Arizona 85701-1317 or via fax to (520) 724-4434.

6.4 Verification of Coverage:

CMAR will furnish COUNTY with certificates of insurance (valid ACORD form or equivalent approved by COUNTY) as required by this Contract. An authorized representative of the insurer will sign the certificates.

6.4.1 All certificates and endorsements, as required by this written agreement, are to be received and approved by COUNTY before work commences. Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance coverages or policies as required by this Contract, or to provide evidence of renewal, is a material breach of Contract.

6.4.2 All certificates required by this Contract will be sent directly to the Department. COUNTY Project or Contract number and Project description will be noted on the certificate of insurance. COUNTY reserves the right to require complete copies of all insurance policies required by this Contract at any time.

6.5 Approval and Modifications:

COUNTY Risk Management reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this Contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

ARTICLE 7 - BONDS AND INSURANCE

CMAR will have and maintain the insurance coverage required by **Article 6 of the General Conditions** and will provide proof thereof to COUNTY before execution of the Contract for Preconstruction Services. CMAR must provide payment and performance bonds and proof of insurance specific to construction to COUNTY prior to COUNTY's approval of the GMP, or if there are multiple GMPs, to the GMP to which they pertain. All insurance and bonds must conform to **Article 6 of the General Conditions**.

ARTICLE 8 - TERMINATION FOR CONVENIENCE OR DEFAULT

COUNTY may terminate this Contract for convenience or default as provided in **Article 11 of the General Conditions**. If this Contract is terminated for default and said termination is determined to be improper or wrongful, in whole or in part, then the termination will be converted to a termination for convenience under **Article 11.3.8 of the General Conditions**, but only to the extent such termination is determined wrongful. In the event of a partial conversion to a termination for convenience, any sums due CMAR under the termination for convenience may be set off against amounts owed to COUNTY by CMAR as damages arising from the termination for default or otherwise.

ARTICLE 9 - INDEPENDENT CONTRACTOR

The status of CMAR is that of an independent Contractor. CMAR will perform its obligations under this Contract without supervision by COUNTY. Neither CMAR nor CMAR's officers, agents, employees, or subcontractors at any tier are employees of COUNTY or entitled to receive any employment-related fringe benefits under COUNTY's Merit System. CMAR is responsible for payment of all Federal, State and local taxes associated with payments received pursuant to this Contract, and will indemnify and hold COUNTY harmless from any and all liability which COUNTY may incur because of CMAR's failure to pay such taxes.

ARTICLE 10 - ACCESS TO RECORDS

A. This Contract is open with respect to all price and cost information, including invoices, estimates, pay applications, subcontractor bids or quotes, and any and all other financial or monetary information or data relevant to this Contract, whether in hard copy or in electronic form. CMAR will keep and maintain proper

and complete books, records and accounts, which must be open at all reasonable times for inspection and audit by duly authorized representatives of COUNTY, including third-Parties designated by COUNTY. Failure of CMAR to keep or provide access to books or information is a material breach of this Contract.

- B. CMAR will retain all records relating to this Contract at least five (5) years after its termination or cancellation or, if later, until any related proceeding or litigation has been closed.
- C. CMAR's records for all Contracts, specifically including but not limited to lump sum Contracts (i.e. fixed price or stipulated sum Contracts), unit price, cost plus or time & material Contracts with or without a guaranteed maximum (or not-to-exceed amounts) will upon reasonable notice be open to inspection and subject to audit, scanning, and/or reproduction during normal business working hours. Such audits may be performed by any COUNTY representative or any outside representative engaged by COUNTY for the purpose of examining such records. COUNTY or its designee may conduct such audits or inspections throughout the term of this Contract and for a period of five (5) years after final payment or longer if required by law. COUNTY's representatives may (without limitation) conduct verifications such as counting employees at the construction site, witnessing the distribution of payroll, verifying information and amounts through interviews and written confirmations with CMAR employees, field and agency labor, subcontractors, and vendors.
- D. CMAR'S records must include any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, Contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers, memoranda, and any and all other agreements, sources of information and matters that may in COUNTY's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Contract document. Such records include (hard copy, as well as computer readable data if it can be made available), written policies and procedures; time sheets; payroll registers; payroll records; cancelled payroll checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, negotiation notes, etc.); original bid estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); backcharge logs and supporting documentation; invoices and related payment documentation; general ledger, information detailing cash and trade discounts earned, insurance rebates and dividends; and any other of CMAR'S records which may have a bearing on matters of interest to COUNTY in connection with CMAR'S dealings with COUNTY (all of the foregoing hereinafter referred to as "records") to the extent necessary to adequately permit evaluation and verification of any or all of the following:
 - 1. Compliance with Contract requirements for deliverables
 - 2. Compliance with approved plans and specifications
 - 3. Compliance with COUNTY's business ethics expectations
 - a. Compliance with Contract provisions regarding the pricing of change orders
 - b. Accuracy of CMAR representations regarding the pricing of invoices
 - c. Accuracy of CMAR representations related to claims submitted by the CMAR or any of its payees.
- C. CMAR will require all payees (examples of payees include but are not limited to subcontractors, material suppliers, insurance carriers) to comply with the provisions of this Article by including the requirements hereof in a written Contract agreement between CMAR and payee. CMAR will ensure that all payees (including those entering into lump sum Contracts) have the same right to audit provisions contained in this Contract.
- D. COUNTY's authorized representative(s) will have reasonable access to the CMAR'S facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Contract and will be provided adequate and appropriate work space in order to conduct audits in compliance with this Article.
- E. If an audit inspection or examination in accordance with this Article discloses overpricing or overcharges to COUNTY (of any nature) by the CMAR and/or the CMAR'S subcontractors in excess of one hundred thousand dollars (\$100,000.00), in addition to making adjustments for the overcharges, CMAR will reimburse the reasonable actual cost of COUNTY's audit to COUNTY. Any adjustments or payments which must be made as a result of any such audit or inspection of the CMAR'S invoices and/or records will be made within a reasonable amount of time not to exceed ninety (90) days from presentation of COUNTY's findings to CMAR.
- F. In addition to the normal paperwork documentation the CMAR typically furnishes to COUNTY, in order to

facilitate efficient use of COUNTY resources when reviewing and/or auditing the CMAR'S billings and related reimbursable cost records, the CMAR agrees to furnish (upon request) the following types of information in the specified computer (PC) readable file format(s):

Type of Record	PC Readable File Format
Monthly Job Cost Detail	.pdf and Excel
Detailed job Cost History To Date	.pdf and Excel
Monthly Labor Distribution detail (if not already separately detailed in the Job Cost Detail)	.pdf and Excel
Total Job to date Labor Distrubution detail (if not already included in the detailed Job Cost History to date)	.pdf and Excel
Employee Timesheets documenting time worked by all individuals who charge reimbursable time to the project	.pdf
Daily Foreman Reports listing names and hours and tasks of personnel who worked on the project	.pdf
Daily Superintendent Reports	.pdf
Detailed Subcontract Status Reports (showing original subcontract value, approved subcontract change orders, subcontractor invoices, payment to subcontractors, etc.	.pdf and Excel
Copies of Executed Subcontracts with all Subcontractors	.pdf
Copies of all executed change orders issued to Subcontractors	.pdf
Copies of all documentation supporting all reimbursable job costs (subcontractor payment applications, vendor invoices, internal cost charges, etc.)	.pdf

ARTICLE 11 – CMAR'S PERFORMANCE

CMAR will employ suitably trained and skilled personnel to perform all required services under this Contract. Prior to changing any key personnel, especially those key personnel COUNTY relied upon in making this Contract, CMAR will obtain the written approval of COUNTY. For the purposes of this Article, the key personnel are those personnel whose resumes were included in CMAR's statement of qualifications referenced in the recitals to this Contract or otherwise agreed to during Contract negotiations and referenced in the CMAR's approved Project organization chart, incorporated herein by reference.

CMAR's performance of its Preconstruction Services obligations and CMAR's active participation in the design process are critical to the success of the Project and are the essence of this Contract for Preconstruction Services. Repeated failure by CMAR to carry out these responsibilities, without excuse for reasons outside the control of CMAR, is a ground for termination for default under **Article 11 of the General Conditions**. CMAR's performance of Preconstruction Services will be an important consideration in the determination whether to proceed to the Construction Services Phase with CMAR and will be a factor for consideration in future procurements.

CMAR is responsible for the quality, technical accuracy, timely completion, and coordination of all its efforts and other services furnished by CMAR under this Contract. Without additional compensation, CMAR will correct or revise any errors, omissions, or other deficiencies in all products of its efforts and other services provided. This includes resolving any deficiencies arising out of the willful or negligent acts or omissions of CMAR found during or after the course of the services performed by or for CMAR under this Contract, to the extent that such willful or negligent errors, omissions and acts fall below the standard of care and skill that a professional CMAR in Arizona would exercise under similar conditions. CMAR's responsibility for these corrections or revisions exists regardless of COUNTY having knowledge of or condoning or accepting the products or the services. Any such resolution of deficiencies will be at no cost to COUNTY.

Correction of errors and omissions discovered on architectural or engineering plans and specifications are the responsibility of the Design Professional.

ARTICLE 12 - SUBCONTRACTORS

CMAR is fully responsible for all acts and omissions of its subcontractor(s) at every tier and of persons directly or indirectly employed by subcontractors at any tier and of persons for whose acts any of them may be liable to the same extent that CMAR is responsible for the acts and omissions of persons directly employed by CMAR. Nothing in this Contract creates any obligation on the part of COUNTY to pay or see to the payment of any money due any subcontractor, except as may be required by law.

CMAR will ensure that all subcontractors have the appropriate and current license issued by the Arizona Registrar of Contractors for Work they perform under this Contract. CMAR will not permit any subcontractor to perform Work that does not fall within the scope of the subcontractor's license, except as may be permitted under the Rules of the Registrar of Contractors.

For the purposes of this Article, "subcontractor" includes consultants to CMAR.

CMAR will not subcontract Work at any tier to any Contractor, firm, consultant, individual or other entity named in the federal System for Award Management (<https://www.sam.gov>) with an open exclusion.

CMAR will select subcontractors in accordance with A.R.S. 34-603.C.2.(e)(i) and CMAR's Subcontractor Selection Plan, incorporated and attached hereto as **Exhibit "B" ATTACHMENT 2 (2 PAGES)**.

ARTICLE 13 - OWNERSHIP OF DOCUMENTS AND MODELS

- A. COUNTY, through its separate agreement with the design professional (DP), has and shall continue to have, ownership of all drawings, specifications, and other documents and electronic data furnished by DP.
- B. All original drawings, field data, estimates, field notes, plans, specifications, documents, reports, calculations, and other information developed by CMAR under this Contract vest in and become the property of COUNTY and will be delivered to COUNTY upon completion or termination of the services, but CMAR may retain and use copies thereof. COUNTY will not use the materials for any Project other than the Project for which it was prepared without the express permission of CMAR.
- C. In the event CMAR develops or generates a building information model (or equivalent) of the Project, CMAR will provide one electronic copy of the final model on permanent media to COUNTY. CMAR's delivery of the model to COUNTY shall constitute a grant to COUNTY of an irrevocable, paid-up, nonexclusive license to copy, use, display, disclose, or modify the model for any reasonable purpose for this Project. CMAR agrees that the rights granted to COUNTY include the ability to provide a copy of the model to any subsequent Contractor retained to maintain, modify or expand the Project in any way. COUNTY agrees that, as between COUNTY and CMAR only, any modifications to the model by or for COUNTY after final completion and acceptance of this Project is at COUNTY's sole risk and responsibility unless CMAR performs such modifications.

ARTICLE 14 - DISPUTE RESOLUTION

- A. At the initial Project meeting, the Parties will develop and establish an escalation procedure to be followed in the event of a failure to resolve an issue or disagreement at the field level. If disputes or disagreements arise, CMAR and COUNTY commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.
- B. The Parties will communicate regularly and work cooperatively to avoid or minimize disagreements or disputes. In the event disagreements or disputes occur, the Parties will work cooperatively at the field level to resolve the issues. CMAR and COUNTY will first attempt to resolve disputes or disagreements through discussions between CMAR's Representative and COUNTY's Representative.

If the Parties are not successful in reaching resolution at the field level, then the Parties will pursue resolution through escalation. If the Parties remain in disagreement, they will follow the procedures in paragraph D. below.

- C. Unless otherwise agreed in writing, CMAR will carry on the Work and maintain its progress during the course of any unresolved claims and controversy proceedings, and COUNTY will continue to make payments as they fall due to CMAR in accordance with the Contract Documents.
- D. In the event of a dispute between COUNTY and CMAR regarding any part of this Contract or the Contract Documents, or the Parties' obligations or performance hereunder, either Party may institute the dispute resolution procedures set forth herein. The Parties will continue performance of their respective obligations hereunder notwithstanding the existence of a dispute.
 - 1. Mediation. If the Parties are unable to resolve the dispute through the special meeting and/or escalation, then upon written notice of either Party of the desire to pursue resolution through mediation, a mediator, mutually acceptable to the Parties and experienced in design and construction matters, will be appointed. The Parties will share the cost of the mediator. The mediator will be given any written statements of the Parties and may review the Project site and any relevant documents. The mediator will call a meeting of the Parties within ten (10) days after appointment, which meeting will be attended by COUNTY's Project manager, CMAR's Project manager, and any other person who may be affected in any material respect by the resolution of such dispute. Such representatives will attempt in good faith to resolve the dispute. During such ten (10) day period, the mediator may meet with the Parties separately.
 - 2. Mediation Minutes. No minutes will be kept with respect to any mediation proceedings, and the comments and/or findings of the mediator, together with any written statements prepared, are non-binding, confidential and without prejudice to the rights and remedies of any Party. The entire mediation process will be completed within twenty (20) working days of the date upon which the initial special meeting is held, unless the Parties agree otherwise in writing. If the dispute is settled through the mediation process, the decision will be implemented by written agreement signed by the Parties.
 - 3. Arbitration. If a dispute involving one million dollars (\$1,000,000.00) or less is not resolved pursuant to the procedures set forth in paragraphs 1. and 2. above, then the Parties will submit the matter to binding arbitration in accordance with the following:
 - a. Jurisdiction. As permitted by A.R.S. § 12-1518, claims, disputes and other matters in question hereunder which cannot be resolved pursuant to the procedures set forth in paragraphs 1 and 2 above are subject to arbitration as set forth below; provided, however, that the arbitrators have no power to change any of the provisions of this Contract in any respect nor have they any power to make an award of reformation, and the jurisdiction of the arbitrators is hereby expressly limited accordingly.
 - b. Request. Either Party may serve the other with a written request for arbitration, which notice will also specify the name and address of one (1) person designated to act as arbitrator on behalf of that Party. Within fifteen (15) days after the service of such request, the other Party will give to the first Party written notice specifying the name and address of the person designated to act as arbitrator on its behalf. If the other Party fails to so notify the first Party within the time above specified, then the appointment of the second arbitrator will be made by the American Arbitration Association pursuant to the rules then in effect. The arbitrators chosen will meet within ten (10) days after the second arbitrator is appointed and will appoint a third arbitrator who is a competent, impartial person, and in the event of their being unable to agree upon such appointment within the foregoing 10-day period, the third arbitrator will be selected by the Parties themselves if they can agree thereon within a further period of fifteen (15) days. If the Parties do not so agree, then either Party on behalf of both may request the American Arbitration Association to appoint the third arbitrator.
 - c. Rules. The arbitration will be conducted in Pima County, Arizona, and in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. Any decision rendered will be based upon Arizona law.

- d. Decision. The arbitrators will render their decision, upon the concurrence of at least two (2) of their number, within thirty (30) days after the appointment of the third arbitrator. Their decision will be in writing and counterpart copies delivered to each Party. A decision in which any two (2) of the arbitrators acting hereunder concur may be appealed directly to the Superior Court of Pima County within thirty (30) days of the date of the decision. Unless so appealed, such decision is all cases final, binding and conclusive upon the Parties and judgment upon the decision may be entered by any court having jurisdiction thereof.
 - e. Fees. Unless otherwise required by the decision of the arbitrators, each Party will pay the fees and expenses of the original arbitrator appointed by such Party or in whose stead, as above provided, such arbitrator was appointed, and the fees of the third arbitrator, if any, will be borne equally by the Parties. Each Party will bear the expense of its own counsel, experts, and preparation and presentation of proof, in connection with all proceedings prior to the entry of a decision by the arbitrators.
4. Litigation. If a dispute involving more than one million dollars (\$1,000,000.00) is not resolved pursuant to the procedures set forth in **1. through 3. above**, then the dispute may be submitted to the appropriate State court of jurisdiction within Pima County or the Parties may submit the matter to Binding Arbitration pursuant to **Sections 3. a. through e. above** if both Parties agree to submit the dispute to the Binding Arbitration process.

ARTICLE 15 – GOVERNING LAW AND REMEDIES

Interpretation of the Contract Documents and any and all disputes arising under or in connection with the Project, Work and Contract Documents are governed by Arizona law. No suit or action may be commenced hereunder by any claimant other than in the Arizona Superior Court in Pima County, and only after all Contractual procedures have been exhausted.

Either Party may pursue any remedies provided by law for the breach of this Contract. No right or remedy is intended to be exclusive of any other right or remedy and each is cumulative and in addition to any other right or remedy existing at law or at equity or by virtue of this Contract.

CONSEQUENTIAL DAMAGES: EXCEPT AS OTHERWISE PROVIDED FOR HEREIN, NEITHER THE COUNTY NOR CMAR IS LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL LOSSES OR DAMAGES ARISING OUT OF BREACH OF CONTRACT, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS.

ARTICLE 16 – NONAVAILABILITY OF FUNDS

Notwithstanding any other provision in this Contract, this Contract may be terminated if, for any reason, there are not sufficient appropriated and available monies for the purpose of maintaining COUNTY or other public entity obligations under this Contract. In the event of such termination, COUNTY has no further obligation to CMAR, other than to pay for services rendered prior to termination.

If funding for this Project is dependent on the sale of revenue bonds or other debt instruments and if bonds or other instruments are not sold or proceeds are not available for this Project, Pima County's obligations under this Contract may be canceled by the Pima County Board of Supervisors. If such a cancellation should be necessary, COUNTY will reimburse CMAR for all services rendered and non-cancelable commitments made prior to the cancellation in the manner set forth in **Article 11 of the General Conditions**.

ARTICLE 17 – ASSIGNMENT

Neither CMAR nor COUNTY may, without the written consent of the other, assign, transfer, or sublet any portion or part of the Work or the obligations required by a Party under the Contract Documents.

ARTICLE 18 - NON-DISCRIMINATION

CMAR agrees to comply with all provisions and requirements of Arizona Executive Order 2009-09 which is hereby incorporated into this Contract as if set forth in full herein including flow down of all provisions and

requirements to any subcontractors. During the performance of this Contract, CMAR will not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.

ARTICLE 19 - AMERICANS WITH DISABILITIES ACT

CMAR will comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. If CMAR is carrying out government programs or services on behalf of COUNTY, then CMAR will maintain accessibility to the program to the same extent and degree that would be required of the COUNTY under 28 CFR Sections 35.130, 35.133, 35.149 through 35.151, 35.160, 35.161 and 35.163. Failure to do so could result in the termination of this Contract.

ARTICLE 20 - BUSINESS ETHICS

A. Conflict of Interest: This Contract is subject to the provisions of A.R.S. 38-511 which provides in pertinent part:

"The state, its political subdivisions or any department of either may, within three years after its execution, cancel any Contract, without penalty or further obligation, made by the state, its political subdivisions, or any of the departments or agencies of either if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the state, its political subdivisions or any of the departments or agencies of either is, at any time, while the Contract or any extension of the Contract is in effect, an employee or agent of any other Party to the Contract in any capacity or a consultant to any other Party to the Contract with respect to the subject matter of the Contract."

B. Ethics: During the course of pursuing Contracts with COUNTY and while performing Contract Work in accordance with this Contract, CMAR agrees to maintain business ethics standards aimed at avoiding any impropriety or conflict of interest which could be construed to have an adverse impact on the COUNTY's best interests.

- 1) CMAR will take reasonable steps to prevent any actions or conditions which could result in a conflict with COUNTY's best interests. These obligations apply to the activities of CMAR employees, agents, subcontractors, subcontractor employees and consultants to CMAR.
- 2) CMAR employees, agents, subcontractors, material suppliers (or their representatives) should not make or cause to be made any cash payments, commissions, employment, gifts, entertainment, free travel, loans, free work, substantially discounted work, or any other considerations to COUNTY's representatives, employees or their relatives.
- 3) CMAR employees, agents or subcontractors (or their relatives) should not receive any payments, commissions, employment, gifts, entertainment, free travel, loans, free work, or substantially discounted work or any other considerations from representatives of subcontractors, or material suppliers or any other individuals, organizations, or businesses receiving funds in connection with the Project.
- 4) CMAR will notify a designated COUNTY representative within forty-eight (48) hours of any instance where the CMAR becomes aware of a failure to comply or possible failure to comply with the provisions of this Article.
- 5) Upon request by COUNTY, CMAR agrees to provide a certified Management Representation Letter executed by selected CMAR representatives in a form agreeable to COUNTY stating that they are not aware of any situations violating the business ethics expectations outlined in this Contract or any similar potential conflict of interest situations.
- 6) CMAR will include this clause in all Contracts with subcontractors and material suppliers receiving more than twenty-five thousand dollars (\$25,000.00) in funds in connection with COUNTY's Project.
- 7) CMAR will permit interviews of employees, reviews and audits of accounting or other records by COUNTY representative(s) to evaluate compliance with the business ethics standards. Such reviews and audits will encompass all dealings and activities of CMAR's employees, agents, representatives, vendors, subcontractors, and other third Parties paid by CMAR in their relations with COUNTY's current or former employees or employee relatives.

- 8) CMAR will implement a program requiring its employees to sign acknowledgements that they have read and understand COUNTY's Business Ethics Expectations and the related obligations outlined in this Contract.

ARTICLE 21- AUTHORITY TO CONTRACT

CMAR warrants its right and power to enter into this Contract. If any Court or administrative agency determines that COUNTY does not have authority to enter into this Contract, COUNTY will not be liable to CMAR or any third Party by reason of such determination or by any reason of this Contract.

ARTICLE 22 - NON-WAIVER

The failure of either COUNTY or CMAR to insist in any one or more instance upon the full and complete compliance of any of the terms and provisions of this Contract or to take any action permitted as a result thereof is not a waiver or relinquishment of the right to insist upon full and complete performance of the same or any other covenant or condition either in the past or in the future. The acceptance by either Party of sums less than may be due and owing it at any time is not an accord and satisfaction.

ARTICLE 23 – NOTICES

Any notice required or permitted to be given under this Contract will be in writing and served by personal delivery or by certified mail upon the other Party as follows:

COUNTY:

Lisa Josker, Interim Director
Facilities Management
150 W. Congress, 3rd Floor
Tucson, AZ 85701
Tel: (520) 724-3104
Fax: (520) 724-3900

CONSULTANT:

Brian Barker, President
Barker Morrissey Contracting, Inc.
2127 E. Speedway Blvd., #101
Tucson, AZ 85719
Tel: (520) 512-5698
Fax: (520) 323-3834

ARTICLE 24 - CONTRACT DOCUMENTS

- A. This Contract is structured as a series of interrelated documents comprised of this Contract, associated appendixes, exhibits, and additional documents incorporated by reference.
- B. The "Contract Documents" are comprised of the following in order of precedence:
1. This Contract, including exhibits, as it may be modified from time to time by the Parties.
 2. Supplementary Conditions, if any, that modify the General Conditions.
 3. Exhibit B General Conditions.
 4. Special Conditions, if any, providing Project-specific conditions and requirements.
 5. The complete design as accepted by the COUNTY, including drawings, specifications, and COUNTY-approved design documents.
 6. COUNTY's Project Criteria developed by COUNTY and Design Professional (if any).
 7. Standard Specifications and similar type documents incorporated by reference.
 8. COUNTY's Request for Qualifications (RFQ) with all Addenda, Exhibits and CMAR's Statement of Qualifications in response to the RFQ.
- B. In the event of conflict between or among successive addenda, amendments, change orders, or modifications thereto, the later govern over the earlier in time, but only to the extent of any conflict.
- C. The Contract Documents, including all Appendixes, Exhibits, attachments, amendments, change orders, and documents incorporated by reference are complementary and should be interpreted in harmony so as to avoid conflict or ambiguity. Terms, words and phrases used in the Contract Documents have the meanings defined in the **General Conditions** or, if not specifically defined, their ordinary and common meaning interpreted in a manner consistent with construction and design industry standards and practice. The objective of the Contract Documents is to provide a Contractual framework and define the relationship between the Parties within which the Parties may complete the Project on time and within the budget for construction.

- D. In the event of any conflict between this Contract and any other document, the Contract governs, and in the event of a conflict between any Appendix or Exhibit and any other document, the order of precedence is as listed in B above.

ARTICLE 25 -- MISCELLANEOUS

- A. **SUCCESSORSHIP.** The provisions of this Contract, including the other Contract Documents, are binding upon the Parties, their employees, agents, heirs, successors and assigns.
- B. **HEADINGS.** Headings used in the Contract Documents are for ease of reference only and will not in any way be construed to limit or alter the meaning of any provision.
- C. **SEXUAL HARASSMENT.** The CMAR will comply with COUNTY's current policy regarding sexual harassment. COUNTY prohibits sexual harassment by any person on COUNTY's premises or at any COUNTY-affiliated functions or facilities.
- D. **MODIFICATIONS.** The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of both Parties.

ARTICLE 26-- PUBLIC INFORMATION

Pursuant to A.R.S. § 39-121 et seq., and A.R.S. §§ 34-603(H), 604(H) in the case of construction or Architectural and Engineering services procured under A.R.S. Title 34, Chapter 6, all information submitted in response to this solicitation that underlies this Contract, including, but not limited to, pricing, product specifications, work plans, and any supporting data becomes public information and upon request, is subject to release and/or review by the general public including competitors.

Any records submitted in response to the solicitation that underlies this Contract that CMAR believes constitute proprietary, trade secret or otherwise confidential information must be appropriately and prominently marked as CONFIDENTIAL by CMAR prior to the close of the solicitation.

Notwithstanding the above provisions, in the event records marked CONFIDENTIAL are requested for public release pursuant to A.R.S. § 39-121 et seq., County shall release records marked CONFIDENTIAL ten (10) business days after the date of notice to CMAR of the request for release, unless CMAR has, within the ten day period, secured a protective order, injunctive relief or other appropriate order from a court of competent jurisdiction, enjoining the release of the records. For the purposes of this paragraph, the day of the request for release shall not be counted in the time calculation. CMAR shall be notified of any request for such release on the same day of the request for public release or as soon thereafter as practicable.

County is not, under any circumstances, responsible for securing a protective order or other relief enjoining the release of records marked CONFIDENTIAL, nor is County in any way financially responsible for any costs associated with securing such an order.

ARTICLE 27 -- LEGAL ARIZONA WORKERS ACT COMPLIANCE

CMAR hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to CMAR'S employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). CMAR will further ensure that each subcontractor who performs any work for CMAR under this Contract likewise complies with the State and Federal Immigration Laws.

COUNTY has the right at any time to inspect the books and records of CMAR and any subcontractor in order to verify such Party's compliance with the State and Federal Immigration Laws.

Any breach of CMAR'S or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, is a material breach of this Contract subjecting CMAR to penalties up to and including suspension or termination of this Contract. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, CMAR will be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a

replacement subcontractor, (subject to COUNTY approval if SBE or MWBE preferences apply) as soon as possible so as not to delay Project completion.

CMAR will advise each subcontractor of COUNTY'S rights, and the subcontractor's obligations, under this Article by including a provision in each subcontract substantially in the following form:

"SUBCONTRACTOR hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to SUBCONTRACTOR'S employees, and with the requirements of A.R.S. § 23-214 (A). SUBCONTRACTOR further agrees that COUNTY may inspect the SUBCONTRACTOR'S books and records to insure that SUBCONTRACTOR is in compliance with these requirements. Any breach of this paragraph by SUBCONTRACTOR is a material breach of this Contract subjecting SUBCONTRACTOR to penalties up to and including suspension or termination of this Contract."

Any additional costs attributable directly or indirectly to remedial action under this Article are the responsibility of CMAR. In the event that remedial action under this Article results in delay to one or more tasks on the critical path of CMAR's approved construction or critical milestones schedule, such period of delay is excusable delay for which CMAR is entitled to an extension of time, but not costs.

ARTICLE 28 - SEVERABILITY


If any provision or any part of a provision of the Contract Documents is finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to applicable laws by any authority having jurisdiction, such determination will not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which will remain in full force and effect as if the unenforceable provision or part were deleted.

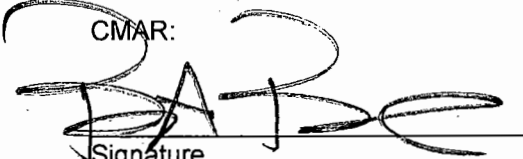
ARTICLE 29 - ENTIRE AGREEMENT

This Contract constitutes the entire agreement between the Parties pertaining to the subject matter hereof, and all prior contemporaneous agreements and understandings are hereby superseded and merged herein. This Contract may be modified, amended, altered or extended only by a written amendment signed by the Parties.

IN WITNESS WHEREOF, the Parties have affixed their signatures to this Contract on the dates written below.

APPROVED:


Procurement Director
2/17/16
Date

CMAR:

Signature
Brian A. Barker
Name and Title (Please Print)
2/16/16
Date

APPROVED AS TO FORM:



Deputy County Attorney
ANDREW FLAGG
Name (Please Print)
2/11/2016
Date

EXHIBIT "A" SCOPE OF WORK (4 PAGES)
**PIMA COUNTY FACILITIES MANAGEMENT
DESIGN & CONSTRUCTION DIVISION**
150 W. Congress Street | 3rd Floor | Tucson, Arizona | 85701
Tel: 520-724-3085 | Fax: 520-724-3900

SCOPE OF CONSTRUCTION MANAGER AT RISK SERVICES

DATE: January 2016
PROJECT NAME: Project Curvature
BUILDING NAME: World View Facility
BUILDING ADDRESS: 1805 E Aerospace Parkway, Tucson, Arizona
PROJECT MANAGER: Carter L. Volle
TELEPHONE: 520-724-3303

A. SCOPE OF SERVICES TO BE PROVIDED BY THE CMAR

1. General Provisions:

The COUNTY plans to utilize the services of a Construction Manager at Risk (CMAR) for the following services:

- a. Partner with the COUNTY and the Design Professional (DP) to mutually establish a documented understanding of those to-be-constructed elements that will comprise the Project Curvature – World View construction scope of work.
- b. Develop a Cost Model, detailed project construction estimates, study labor conditions and provide advice regarding methods, means, constructability and sequencing, material availability and its impact on the schedule, and otherwise contribute to the advancement and development of the Project throughout the Pre-construction phase.
- g.
- c. Based on the documented understanding of "a" above, prepare for the COUNTY'S review a Guaranteed Maximum Price (GMPs) for the constructed portion of the project.
- h. If the GMPs proposed by the CMAR is acceptable to the COUNTY, the parties agree to execute an amendment to the initial Agreement to incorporate the GMP, Construction Documents, CMAR assumptions, clarifications and schedules as may be necessary to define the Scope of Construction Work. If the GMP is not within the COUNTY'S Project Budget, the COUNTY reserves the right to terminate the initial agreement.

2. Project Background:

Pima County purchased land south of Raytheon to prevent residential encroachment that would threaten the viability of this test site. The area was planned for an Aerospace, Defense, & Technology Research and Business Park. A new road has been constructed across the northern portion of the property with a new entry road to Raytheon's south entrance providing access to land that previously had no access. Focus of this Research & Business Park is on significant employers with related Aerospace, Defense or Technology products or research with pay scales greater than the regional average. As with many employment centers, the first facility built is a draw for others to come. This project meets all of the criteria for the business park and will result in a general purpose manufacturing facility with limited office space and will be the first facility located in the Park.

3. Project Narrative:

To develop a general purpose manufacturing facility that will accommodate a broad range of uses, that is cost effective to operate, that can be repurposed over time as needed for various users should the planned user outgrow the facility. Include appropriate attached equipment and infrastructure to properly function as a manufacturing facility. Incorporate a tower with crane facilities to accommodate special uses. Due to critical scheduling needs, the facility needs to be operational by November, 2016.

Construct a 120,000 sq. ft. steel frame structure with appropriate access, loading docks, and equipment parking facilities to accommodate light manufacturing operations. Facility will include a 15,000 to 20,000 Sq. Ft. mezzanine within the structure for office and support operations. Appropriate site work for parking, storage and a launch pad as well as utility access to the building must be included. Construct a 700' launch Pad north of the building on 17+ acres of County property and an appropriate distance from any major vertical structures to be used to launch balloon and other permitted vehicles in accordance with FAA and Air Traffic Control specifications. The launch pad will be available for commercial use per regulations established by Pima County.

As a part of the development of the Aerospace, Defense, and Technology Research and Business Park, this facility will provide a site for the location of an International space flight firm that will attract approximately 450 high paying jobs over the next 5 years. The creation of a significant balloon and other vehicle launch pad will establish an attraction for other space flight companies and suppliers to come to the area with similar staffing levels and pay scales. The launch pad will also be accessible to Raytheon and other aerospace related companies.

4. Project Team:

The project team will be made up of representatives from:

- Pima County Administrator's Office
- World View Personnel
- Pima County Project Management Office
- Pima County Facilities Management
- Pima County Department of Transportation
- Pima County Regional Wastewater Reclamation Department
- Swaim Associates LTD Architects AIA

5. Estimated Budget & Cost Control

The total project budget shall not exceed **\$16,500,000 – Certificates of Participation**, which includes approximately \$11,660,000 available for construction by the CMAR. The CMAR shall assist the COUNTY with cost reconciliations and GMP reviews with the DP.

6. Project Schedule:

- a. Design through Construction in multiple phases – Eleven months

The CMAR shall develop and maintain the master project schedule in association between the DP, COUNTY and Project Team throughout the construction phase.

7. Project Phases:

This project will be on a fast track schedule to include the following design and construction packages:

- Grading
- Site Development
- Metal Building
- Foundations
- Core and Shell
- Interiors

8. Applicable Codes and Regulations:

The CMAR shall comply with all applicable codes and regulations as defined by Pima County Development Services and the Arizona State Fire Marshal.

The CMAR shall assist the COUNTY and DP with obtaining a building permit with Pima County Development Services.

The CMAR shall assist the COUNTY and DP with submission to the Arizona State Fire Marshal for permit as applicable.

9. CMAR Methodology / Services:

The intent is to establish a relationship of trust and confidence between the CMAR, the DP, the Project Manager, and the COUNTY. The Project will be an "Open Book" process, whereby the DP and the COUNTY may attend any and all meetings and bid openings related to the Project and have access to any and all books, accounts, and reports of the CMAR relating to the project.

The COUNTY will contract for the CMAR services in phases and use of a fast track approach requiring multiple GMPs of the CMAR is deemed appropriate. For Phase I, the CMAR will start by providing pre-construction services during the design phase of the Project and perhaps the first phase GMP. At the completion of the design, or at any point in prior to completion of design, as may be required by the COUNTY, the CMAR will be requested to provide GMP(s) to act as the General Contractor for construction and assume the risk of delivering the Project on schedule at or under the GMP(s). Acceptance of the GMP(s) by the COUNTY will initiate the subsequent phases, which will include complete construction services for the actual completion of the project. Acceptance of the GMP(s) will be reflected in the contract in an amendment.

Small Business Enterprise (SBE) goals will be set on a percentage basis as appropriate for each GMP phase.

The COUNTY reserves the right to end the CMAR's services at any time during pre-construction services, and continue with an alternate CMAR procurement or with a traditional Design-Bid-Build procurement if deemed in the best interest of the COUNTY. If this occurs, the CMAR shall be paid at the agreed upon fee for services rendered. No anticipated profits will be paid for work not performed.

- a. Project Initiation: Upon award of this agreement and authorization to proceed from the COUNTY, the CMAR shall attend and participate in a "kick-off" meeting to include all identified participants in project. This meeting is intended to open lines of communication between all participants and to verify needs, schedules and goals of the work to take place. The CMAR shall confirm all targets, meetings, reviews and deliverables on a master schedule. This will be an opportunity to establish a project understanding among all team members regarding direction and responsibilities.
- b. Design/Pre-Construction services rendered of the CMAR may include but not limited to the following:
 - Project scheduling/management

- Construction phasing plan review and development
- Value analysis/engineering
- Permit application assistance
- Constructability reviews
- Cost model/budgeting
- Design evolution documentation
- Estimating/price guarantees (GMP)
- Bid package coordination/strategy (subcontracting, SBE compliance)
- Identification and ordering strategy of long lead-time materials
- Building information modeling (BIM) / clash detection coordination – see detail below.

c. Construction Phase services required of the CMAR may include the following:

- Team management/coordination
- Construction (including potential construction phasing)
- Scheduling/submittal process
- Cost control/change order management
- Subcontract management
- Field management
- Safety/QC programs
- Project closeout
- Warranty period services

B. SCOPE OF SERVICES TO BE PROVIDED BY PIMA COUNTY

COUNTY shall provide the following items and services in support of the CMAR's work:

1. Cost of reproductions for all documents as listed in the Contract, which are used for meetings with COUNTY representatives, and as requested by the COUNTY's Project Manager. Reproduction costs which are used for coordination purposes between the CMAR's team members will not be paid for by the COUNTY.
2. Cost of reproductions for all documents required for bidding and construction, shall be with vendors having a purchase order with the COUNTY.
3. Cost of Geotechnical Investigations and materials testing based on Project requirements defined by DP and CMAR;
4. A Project Facilitator and Manager from Facilities Management assigned to work with the CMAR.
5. Any information available regarding utilities and services, or any other project specific information as required. This does not limit or negate the requirement of the CMAR to verify the field conditions;
6. Any reports and/or mitigation regarding the presence of hazardous materials on the property. In the event that hazardous materials are encountered, the COUNTY will contract directly with Abatement Consultants and Contractors for remediation, should that be necessary;
7. Any building Materials and Finishes Standards desired by the COUNTY;
8. Apply for and pay building permit fees to include Pima County Wastewater fees.
9. Full Interior design and furniture / equipment design services will be supplied by Pima County Facilities Management. This service will be provided to the DP and will include review of design documents, finish material consultation, room finish schedule consultation, materials specifications consultation, furniture and design and layout.
10. Cultural Resources review and monitoring.
11. Consultation with Pima County officials as required.

Exhibit 4
Amendment 7 to Barker Morrissey Contracting, Inc.

PIMA COUNTY FACILITIES MANAGEMENT DEPARTMENT

PROJECT: Construction Manager At Risk Services for Project Curvature

CONTRACTOR: Barker Morrissey Contracting, Inc.
2127 E. Speedway Blvd., #101
Tucson, AZ 85719

CONTRACT NO.: CT-FM-16-241

AMENDMENT NO.: Seven (7)

FUNDING: Certificates of Participation- 2016

CONTRACT

NO. CT-FM-16-241

AMENDMENT NO. 07

This number must appear on all
invoices, correspondence and
documents pertaining to this
contract.

CONTRACT TERM: 01/19/16- 02/28/17

TERMINATION PRIOR AMENDMENT: 02/28/17

TERMINATION THIS AMENDMENT: 02/28/18

ORIGINAL CONTRACT AMOUNT:

\$ 101,475.00

PRIOR AMENDMENT(S):

\$ 12,298,184.41

AMOUNT THIS AMENDMENT:

\$ -

REVISED CONTRACT AMOUNT:

\$ 12,399,659.41

CONSTRUCTION CONTRACT AMENDMENT

WHEREAS, COUNTY and CONTRACTOR entered into the Contract referenced above for Construction Manager at Risk services for the project referenced above; and

WHEREAS, additional time is needed for CONTRACTOR to obtain and install a large custom piece of equipment integral to a portion of the operation that requires nine (9) months of manufacturing time; and

WHEREAS, COUNTY and CONTRACTOR, pursuant to ARTICLE 1 – TERM, have agreed to extend the Contract term.

NOW, THEREFORE, it is agreed as follows:

CHANGE: ARTICLE 1 – TERM, as follows:

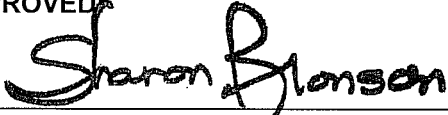
FROM: "This Contract ...terminates on February 28, 2017..."

TO: "This Contract ...terminates on February 28, 2018 ..."

This Amendment shall be effective on February 7, 2017.

All other provisions of the Contract, not specifically changed by this Amendment, shall remain in effect and be binding upon the parties.

APPROVED:



Chair, Board of Supervisors

FEB 07 2017

Date

CONTRACTOR:



Signature


Project MANAGER

Name and Title (Please Print)

1-12-16

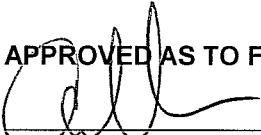
Date

ATTEST:



Clerk of the Board

APPROVED AS TO FORM:



Deputy County Attorney

ANDREW FLAGG

Name (Please Print)

1/9/2017

Date

Exhibit 5

**Board of Supervisors Memorandum from Charles H. Huckelberry
Dated January 19, 2016**



Board of Supervisors Memorandum

January 19, 2016

**World View Enterprises, Inc. Corporate Headquarters in the County
Aerospace, Defense and Technology Research and Business Park**

Introduction

For the last six months, Pima County and Sun Corridor Inc. have been working to retain a technology company in Pima County. The codename for the company has been "Project Curvature." The County, City of Tucson, Sun Corridor Inc., and the Arizona Commerce Authority have all cooperated to provide Project Curvature certain economic development benefits to expand their facilities in Pima County (Attachment 1). The company name is World View Enterprises, Inc. The entrepreneurs that established World View previously launched another successful space research company in Pima County known as Paragon Space Development Corporation.

Pima County and the State of Arizona competed with the Florida Space Coast, as well as the State of New Mexico's Space Port America near White Sands. In the Florida case, Enterprise Florida assembled a package that included building and equipment financing, attractive lease rates, tax refunds and property tax abatements. New Mexico offered similar incentives and also included a substantial expenditure from their "deal closing" funds. Both locations had existing space ports with little need by the company or the jurisdiction to build additional resources or infrastructure.

There were advantages for World View to remain in southern Arizona and avoid moving costs, but the gap between the offer assembled by Sun Corridor Inc. and the economic development organizations in Florida and New Mexico was still in the \$15 to \$20 million range. For World View to retain their small but steadily growing operation in Tucson, the State and local governments needed to provide additional resources and incentives to keep the company from relocating.

We were notified on December 23, 2015 that World View had accepted the County's incentive proposal, as well as those of the Arizona Commerce Authority and the City of Tucson (Attachment 2). World View's acceptance of Pima County's proposal was contingent upon the County making its best efforts to deliver the manufacturing site by November 2016.

World View – A Space Technology Corporation

World View is a Tucson-based company pioneering the development of suborbital space flight, utilizing proprietary high-altitude balloon technology with parafoil controlled recovery

The Honorable Chair and Members, Pima County Board of Supervisors
Re: **World View Enterprises, Inc. Corporate Headquarters in the County Aerospace, Defense
and Technology Research and Business Park**
January 19, 2016
Page 2

to launch and recover from the same geographic area. This makes research, scientific and ultimately tourism flights more affordable, as well as minimizes risk to sensitive research equipment that exists with rocket-powered space flight and recovery.

World View has recently successfully negotiated multimillion dollar contracts with the National Aeronautics and Space Administration (NASA) and Northrop Grumman. World View anticipates significant additional demand based on commercial application of their suborbital space technology for tactical communications and surveillance. In addition, untapped potential exists with regard to space tourism.

The World View senior management team consists of Jane Poynter, Chief Executive Officer and Taber MacCallum, Chief Technology Officer; both founders of Tucson based Paragon Space Development Corporation and members of the first crew to live in Biosphere 2 for two years. Chief Scientist is Dr. Alan Stern, former NASA Associate Administrator for Science, and the Director of Flight Crew Operations is Astronaut Mark Kelly. Their advisory team includes many of the world's leading experts on nearspace science and balloon technology.

World View appears to have a business competitive space advantage to attract additional commercial clients, as well as aerospace and research institutions as the company has demonstrated the ability to a) provide suborbital, orbital, or a stationary instrument platform; b) maintain a sustained presence with continuous observation while far above controlled airspace; c) deploy quickly with flexible launch locations; and d) minimize deployment costs and recover the payload.

They will also have an advantage in space tourism because of a) non-traumatic launch to the edge of space in a unique eight-person sealed capsule; b) no significant health requirements or special suits; c) less expensive, safer, and gentler alternative; d) the ability to spend hours aloft; and e) gentle, controlled descent.

World View Job Growth Schedule

World View has selected Tucson and Pima County as their world corporate headquarters, and their primary employment base will reside within Pima County. Based on scheduled deliverable contract obligations, World View employment will grow substantially in the next five years. World View is expected to grow from over 25 employees to over 400 employees within the next five years and will pay on average \$55,000 per year, or 150 percent of the current annual wage in Pima County. These jobs are export-based jobs that have been our priority for job growth as designated in the County adopted Economic Development Plan for 2015 through 2017.

Economic and Revenue Impacts of the Project

Pima County, through its partnership with Sun Corridor Inc., requested an independent, third-party analysis of the economic and revenue impacts of World View's proposed operation. The analysis, conducted by Phoenix-based Applied Economics, estimated the total economic impact of World View's operations at approximately \$3.5 billion over the next 20 years.

Including the previously noted 400-plus direct jobs created by World View, the company's operations would directly and indirectly support a total of 840 jobs created in Pima County and generate an estimated \$38.7 million in annual personal income in our region. The 400-plus direct jobs expected to be employed by World View in 2020 would result in an annual payroll of in excess of \$25.3 million; and the additional 400 indirect jobs created in Pima County businesses would support an estimated \$13.5 million in payroll during that same time period. Construction of the new facility is expected to create 100 new direct construction jobs and 50 indirect jobs in Pima County and generate an estimated \$13.5 million in new construction activity. This would result in a one-time economic impact to our region of an estimated \$19.5 million.

In addition to its important stimulus of the local economy, World View's operations would also provide significant tax revenues to local governments during the 20-year period analyzed by Applied Economics. The direct and indirect revenue impacts to Pima County alone are estimated at \$10.7 million, with additional revenue for the City of Tucson, Regional Transportation Authority, Pima Community College and Sunnyside Unified School District.

Applied Economics' analysis concluded that World View's operation would provide significant economic development benefits for Pima County and create a large number of high paying jobs for our region. The complete economic and revenue analysis is Attachment 3 to this memorandum.

World View Headquarters Site Selection

As stated previously, Pima County has been working with World View for over six months on a proposal to retain them within the region. We have worked very closely with their Real Estate Representative, PICOR, to find a site that would be acceptable to World View. Of all the various sites reviewed, World View has chosen a location within the County's planned Aerospace, Defense and Technology Business and Research Park. The property

selected consists of 28 acres adjacent to the newly constructed Aerospace Parkway and south of Raytheon's new main south entry. The County has coordinated closely with Raytheon to ensure a new user such as World View is compatible with their operations. They have wholeheartedly endorsed the location of World View at the selected site. World View has had multiple discussions with the Air Traffic Control branch of the Federal Aviation Administration regarding the suitability of this site for launch operations.

The World View business model is consistent with our tenant goals for the Aerospace, Defense and Technology Business and Research Park. Their international clientele and involvement with a wide range of aerospace companies and the potential to attract suppliers make them a good initial tenant for the Park. World View also stands to be a major contributor to regional tourism with their international investors and client base and will be a high-profile tenant positioned along the Aerospace Parkway. Our property location very near Tucson International Airport is also beneficial for their client and investor base and is expected to contribute to Tucson Airport Authority and Fixed Base Operator revenues.

Facility Improvements Necessary to Retain World View in Pima County

As part of the County offer and incentive for World View, the County has proposed to construct a 120,000 square foot standard steel frame facility to accommodate light manufacturing operations on approximately 12 acres. The facility will include a 15,000 square foot mezzanine within the overall structure for office and support operations, for a total of 135,000 square feet of leasable space. The worksite will include parking and storage, as well as a 700-foot diameter launch pad. The total cost of the new facility – including all permitting fees, fees to be paid to the City of Tucson for transportation impact, payment for fixtures, furniture, equipment that are affixed to the structure – as well as facility construction, is estimated to be \$15 million and will be limited to no more than \$15 million – \$14.5 million for the manufacturing and administrative building and \$500,000 for the space port.

In our proposal, the County will finance this facility to be repaid by World View through annual lease and/or rent payments. The Lease/Purchase Agreement and legal description are Attachment 4 to this memorandum. Annual lease and/or rent payments are identified in Table 1 below and are compared with the County financing of the capital facilities, which will be through a 15-year Certificate of Participation financing agreement. The lease payments from World View will be over a 20-year period, with an option to purchase.

Table 1: Building Financing and Lease Payments.

	Paid by Pima County (at the end of the year)			Paid by World View	Excess (Deficit) of Amounts Paid by World View to Amounts Paid by Pima County	
Year	Principal	Interest	Lease Rate per square foot	Lease Payment	Period Deficit	Cumulative Deficit
1	\$ 749,116.51	\$ 600,000.00	\$ 5.00	\$ 675,000	(\$674,116.51)	(\$674,116.51)
2	779,081.17	570,035.34	5.00	675,000	(674,116.51)	(1,348,233.01)
3	810,244.41	538,872.09	5.00	675,000	(674,116.51)	(2,022,349.52)
4	842,654.19	506,462.32	5.00	675,000	(674,116.51)	(2,696,466.02)
5	876,360.36	472,756.15	5.00	675,000	(674,116.51)	(3,370,582.53)
6	911,414.77	437,701.73	8.00	1,080,000	(269,116.51)	(3,639,699.03)
7	947,871.36	401,245.14	8.00	1,080,000	(269,116.51)	(3,908,815.54)
8	985,786.22	363,330.29	8.00	1,080,000	(269,116.51)	(4,177,932.04)
9	1,025,217.66	323,898.84	8.00	1,080,000	(269,116.51)	(4,447,048.55)
10	1,066,226.37	282,890.13	8.00	1,080,000	(269,116.51)	(4,716,165.06)
11	1,108,875.43	240,241.08	10.00	1,350,000	883.49	(4,715,281.56)
12	1,153,230.44	195,886.06	10.00	1,350,000	883.49	(4,714,398.07)
13	1,199,359.66	149,756.84	10.00	1,350,000	883.49	(4,713,514.57)
14	1,247,334.05	101,782.46	10.00	1,350,000	883.49	(4,712,631.08)
15	1,297,227.41	51,889.10	10.00	1,350,000	883.49	(4,711,747.58)
16			12.00	1,620,000	1,620,000.00	(3,091,747.58)
17			12.00	1,620,000	1,620,000.00	(1,471,747.58)
18			12.00	1,620,000	1,620,000.00	148,252.42
19			12.00	1,620,000	1,620,000.00	1,768,252.42
20			12.00	1,620,000	1,620,000.00	3,388,252.42
	\$15,000,000.00	\$5,236,747.58		\$23,625,000	\$3,388,252.42	

The financing and rent is based on an assumed financing interest rate of four percent. By cursory examination of Table 1 above, the County is front-ending the capitalization of the building and facilities and fully recovering our investment, with an excess payment of nearly \$3.4 million over a 20-year lease period. The option to purchase between Years 10 and 17 will include a requirement that should World View opt to purchase the building, the accumulated deficit in our advancement of principal and interest payments must be fully repaid with interest over the period we have incurred a deficit at the stated long-term government investment pool rate. This is the interest rate the County would have received

on all funds, such as the fund balance or other funds reserved for purposes other than annual expenditure. In essence, the County is being made financially whole regardless of the option selected by World View; an early lease purchase or a full-term 20-year lease. Included in the \$15 million is not only the capital construction to build the facility, but all fees paid to the City and the County. Notable conceptual fee payments from this \$15 million are shown in Table 2 below. These estimates are relatively accurate but may vary.

Table 2: World View Headquarters Fee Payments.

Description	Amount
Wastewater Connection Fees	\$ 27,030
Water Connection Fee	10,600
Building/Site Development Permit Fees	446,000
Southland Impact Fees	566,370
Total	\$1,050,000

The building/site development permit fees will be paid to the County's Development Services Department. The Southland Impact Fees will be paid to the City of Tucson. The City Manager has committed these fees to the transportation facilities in the Sonoran Corridor.

In addition, the County has assigned a market value of the land being purchased through the possible lease/purchase of this site at approximately \$37,000 per acre, which compares to the initial purchase price of the property of \$16,000 per acre. Hence, amplifying the economic benefits associated with the County's acquisition of these lands to ensure future commercial and industrial users that are compatible with Raytheon operations.

Development of Pima County SpacePort Tucson

Of the 28 acres being occupied for World View expansion, 12 acres are dedicated to the manufacturing, assembly and administrative building of 135,000 square feet, plus site parking and an area for future building expansion. Sixteen acres are being set aside for a 700-foot diameter concrete launch pad. The World View building and manufacturing site will be under an operating agreement for World View uses. The launch pad will be used by World View for their purposes of vehicle launch, and they will have priority use of the launch pad. The SpacePort Operating Agreement and legal description are Attachment 5 to this memorandum. The launch pad will remain a public asset and be available for other commercial near-space or stratospheric uses consistent with Federal Aviation Administration (FAA) regulations and under the control of FAA Air Traffic Control. The process for federal spaceport approval has been initiated.

A 450-foot asphalt launch pad was originally planned; however, an optional 700-foot launch pad is desired. The County will prioritize development of the 700-foot diameter launch pad, and we intend to pursue grant opportunities to construct this larger launch pad. A larger pad will significantly increase the user base; not only for balloon flight operations, but also for the ability to launch and recover a variety of experimental vehicles. Likely most significant for World View is that the larger pad accommodates heavy-lift launches and human flights, which the smaller pad would not. A large, flat, protected and secured area is difficult to find, especially one that can be scheduled for use over periods of days and has utilities. The larger launch pad will be an asset to the Aerospace Park and southern Arizona in general, since the launch pad would qualify the site as a spaceport similar to other designations in other states that are home to space industry operations.

Selection of Project Architect and Contractor

During the recruitment process to offer World View facilities in Pima County, it was necessary to quantify their exact architectural program and space needs, as well as provide them with a reliable cost estimate for building construction. The County initially selected Swaim Associates, Ltd. Architects, AIA, with Principal Phil Swaim as the Lead Architect. Swaim Associates is the firm that provided architectural services for the integrated medical facilities at The University of Arizona, which included complex laboratory, aerospace and science facilities. The architectural services required by World View are closely aligned and technically similar to the work performed by Swaim for the University.

Barker Morrissey was selected during the proposal development process, since the firm has significant complementary project experience to that required by World View. Such projects include a two-phase new construction and renovation for Texas Instruments comprised of laboratory (including Class 1000 clean room space) and research and development space, as well as office space. Barker Morrissey also completed a 65,000 square foot research and development facility for Sion Power and a 60,000 square foot medical logistics and distribution center in the Marana area.

These two firms provided months of substantial services without compensation to provide the necessary architectural programming and design and cost models to determine the reliable size, configuration and cost of constructing World View's headquarters in Pima County.

Given the required facility delivery date of November 2016 and because of their prior involvement and detailed understanding of World View requirements, the County will now select Swaim Associates, Ltd. as the Project Architect and Barker Morrissey Contracting as the Contractor using the authority granted under A.R.S. § 34-606 Emergency Procurement and Section 11.12.060 of the Pima County Procurement Code, whereby the County has

determined that due to the compressed timeframe for design and construction of this facility, compliance with the full provisions of the statute is impracticable and contrary to the public interest . It has been determined the most expedient contract methodology for delivery of the facility is award of the Architectural Design Contract to Swaim Associates, Ltd. and a Construction Manager at Risk Contract to Barker Morrissey Contracting, Inc. for phased construction with multiple Guaranteed Maximum Price proposals as the project design progresses.

Arizona, Pima County and Tucson Achieve SpacePort Designation

Throughout the United States (US) there are a limited number of states that have any major entry into space technology. On a map of the US showing states that have entered the space technology industry, Arizona is noticeably absent (Attachment 6). Adding the World View facility and the 700-foot diameter spaceport launch pad makes Arizona, Pima County and Tucson viable competitors in the space technology industry. The facility will be named "SpacePort Tucson."

Recommendation

I recommend the Board of Supervisors take the following actions:

1. Approve the Lease/Purchase Agreement, including the Purchase Option, between Pima County and World View Enterprises, Inc. for the development of their manufacturing and administrative headquarters in the Aerospace, Defense and Technology Business and Research Park. The Lease/Purchase Agreement contains a provision for a separate first right of refusal purchase option for six acres immediately west of World View's manufacturing and administration complex for future expansion.
2. Approve the issuance of Certificates of Participation in an amount not to exceed \$15 million for the development, design, and construction of the World View Enterprises, Inc. manufacturing and administrative headquarters.
3. Approve the SpacePort Operating Agreement related to World View's operation of the spaceport on behalf of Pima County and authorize all necessary actions of the County to apply for a space port license and approval from the Federal Aviation Administration, as well as a construction-in-aid grant from the Aeronautic Division of the Arizona Department of Transportation to supplement County funding for construction of the spaceport.
4. Make the following awards:

The Honorable Chair and Members, Pima County Board of Supervisors
Re: **World View Enterprises, Inc. Corporate Headquarters in the County Aerospace, Defense
and Technology Research and Business Park**
January 19, 2016
Page 9

A. Swaim Associates, Ltd. Architects, AIA (Headquarters: Tucson, Arizona); Not to Exceed \$850,000, including a \$50,000 contingency; Contract term January 19, 2016 through February 28, 2017; for Architectural and Engineering Design Services.

B. Barker Morrissey Contracting, Inc. (Headquarters: Tucson, Arizona); Not to Exceed \$12,400,000, including attached fixtures and equipment and an \$800,000 Contingency; Contract term January 19, 2016 through February 28, 2017; for Construction Manager at Risk Services for both preconstruction and construction services.

The County will pay all fees now estimated at approximately \$1,050,000, as well as nongovernmental utility extensions estimated at \$700,000.

In order to expedite construction under these contracts, the Board of Supervisors approves the Procurement Director to execute any and all contracts, amendments and change orders to the contracts listed above within the dollar and term limits awarded by this action. Any amendment or change order resulting in a contract value or term in excess of the Board award will be submitted to the Board for approval.

Respectfully submitted,



C.H. Huckelberry
County Administrator

CHH/mjk – January 13, 2016

Attachments

Exhibit 6
Minutes from Board of Supervisors Meeting of January 19, 2016

Certificate of Clerk

Board of Supervisors of Pima County, Arizona

State of Arizona

County of Pima ^{ss}

I, Robin Brigode, the duly appointed, and qualified, Clerk of the Board of Supervisors of Pima County, Arizona, hereby certify that the following is a true and correct copy of the minutes of a meeting of the Board of Supervisors held on the 19th day of January, 2016, and that a quorum was present thereat.

(See attached Minutes, pages 1 thru 29)

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Board of Supervisors of Pima County, Arizona, this 23rd day of August, 2016.

Robin Brigode

Clerk

It was moved by Supervisor Elías and seconded by Supervisor Valadez to approve the appointment of Matt Kopec to fill the vacancy for Arizona Legislative District 9. Upon roll call, the motion carried by a 4-1 vote, Supervisor Miller voted "Nay."

26. Trans Pacific Partnership

RESOLUTION NO. 2016 - 2, of the Board of Supervisors, opposing the proposed Trans Pacific Partnership, any similar new trade agreements, and the extension of disastrous past trade agreements. (District 5)

It was moved by Supervisor Elías and seconded by Supervisor Valadez to adopt the Resolution. Upon roll call, the motion carried by a 5-0 vote.

COUNTY ADMINISTRATOR

27. World View Enterprises, Inc., Corporate Headquarters in the County Aerospace, Defense and Technology Research and Business Park

Staff recommends the following:

1. Approve the Lease/Purchase Agreement, including the Purchase Option, between Pima County and World View Enterprises, Inc., for the development of their manufacturing and administrative headquarters in the Aerospace, Defense and Technology Business and Research Park. The Lease/Purchase Agreement contains a provision for a separate first right of refusal purchase option for six acres immediately west of World View's manufacturing and administration complex for future expansion.
2. Approve the issuance of Certificates of Participation in an amount not to exceed \$15 million for the development, design, and construction of the World View Enterprises, Inc. manufacturing and administrative headquarters.
3. Approve the SpacePort Operating Agreement related to World View's operation of the spaceport on behalf of Pima County and authorize all necessary actions of the County to apply for a spaceport license and approval from the Federal Aviation Administration, as well as a construction-in-aid grant from the Aeronautic Division of the Arizona Department of Transportation to supplement County funding for construction of the spaceport.
4. Make the following awards:
 - A. Swaim Associates, Ltd. Architects, AIA (Headquarters: Tucson, AZ); not to exceed \$850,000.00, including a \$50,000.00 contingency; contract term January 19, 2016 through February 28, 2017; for architectural and engineering design services.
 - B. Barker Morrissey Contracting, Inc. (Headquarters: Tucson, AZ); not to exceed \$12,400,000.00, including attached fixtures and equipment and an \$800,000.00 contingency; contract term January 19, 2016

through February 28, 2017; for construction manager at-risk services for both preconstruction and construction services.

5. Approval for the Procurement Director to execute any and all contracts, amendments and change orders to the contracts listed above within the dollar and term limits awarded by this action. Any amendment or change order resulting in a contract value or term in excess of the Board award will be submitted to the Board for approval.

Jayne Poynter and Taber MacCallum, World View Enterprises, Inc., provided a presentation on World View Enterprises to the Board.

The following speakers addressed the Board:

- Keith Van Heyningen
- Brad Johns
- Adriana Moerkerken
- Joe Boogart
- Justin Williams
- Carol Kovalik
- Joe Snell, President, Sun Corridor

They offered the following comments:

- It was unwise to spend taxpayer dollars on the property because the County was in debt and the road conditions were not good. This was a risky project, there was a substantial market risk with commercialization and data did not show how big the market was.
- This was a profit based business that expected help with County tax dollars and there were not enough private investors.
- The company expected high-based returns which shouldn't be the burden of the taxpayer.
- Research shows that all growth in jobs are started with these types of companies.
- Due diligence was a concern.
- The Sun Corridor Board of Directors were in support of the project, which would provide opportunity for more business

It was moved by Supervisor Valadez and seconded by Supervisor Carroll to approve the item. Upon roll call, the motion carried by a 4-1 vote, Supervisor Miller voted "Nay."

FINANCE AND RISK MANAGEMENT

28. Request for Exemption

Staff requests approval of the Request for Exemption from Requirement to Post Statutory Deposit for submission to the Industrial Commission of Arizona.

Exhibit 7
March 28, 2016 Letter from Goldwater
Institute

GOLDWATER

I N S T I T U T E

Where freedom wins.

March 28, 2016

Sharon Bronson, Chair, Supervisor District 3
Pima County Board of Supervisors
130 W. Congress St., 11th Fl.
Tucson, AZ 85701
Fax: (520) 884-1152

VIA U.S. MAIL & FAX

Re: Pima County's Subsidy to World View Enterprises

Dear Chairperson Bronson:

The Goldwater Institute has learned that the Pima County Board of Supervisors approved an agreement with World View Enterprises, Inc. on January 19, 2016, in which the County obligated at least \$15 million in public funds to construct a high-altitude balloon facility for World View's use and benefit.

To pay for this project, the County has approved new Certificates of Participation (COPs)—debt that the County expects to repay over the course of 15 years. The COPs are essentially second mortgages on several public buildings, including the Public Works Building and parking garage, the Legal Services Building, the Public Service Center and parking garage, and the Adult Detention Center. This financing scheme adds \$15 million in long-term debt to the County's existing liabilities, extends repayment of existing COPs, and risks Pima County's critical infrastructure on a speculative and untested business. In addition to constructing a 135,000 square-foot headquarters for World View, the County has also agreed to build a balloon pad that World View will control and use rent free.

Because the County is lending its credit in aid of a private corporation in the one instance, and subsidizing construction and use of the balloon pad in the other, this agreement violates the Gift Clause of the Arizona Constitution (Art. IX, sec. 7), which makes it illegal for the County to "give or loan its credit in the aid of, or make any donation or grant, by subsidy or otherwise, to any . . . corporation." The Arizona Supreme Court has held that public expenditures must be for public purposes and if public expenditures create private benefits, the government must receive fair consideration in return. Moreover, indirect benefits—such as general economic

improvement—are not consideration under the Gift Clause. *See Turken v. Gorden*, 223 Ariz. 342, 224 P.3d 158 (2010).

This agreement serves no public purpose. World View will charge \$75,000 for balloon rides to the stratosphere—three times the average per capita income in Pima County. This is beyond the reach of most residents, and will only benefit extremely wealthy passengers and World View itself—if it ever begins operations—at the taxpayers’ expense. Moreover, the jobs that World View has said it might create provide no direct benefit to the County, or its residents. These factors are doubtless why the County’s voters overwhelmingly rejected public subsidies for economic development and tourism promotion in November.

Nor is the consideration fair to taxpayers. The County is using public credit to finance this project at taxpayer risk while a private corporation enjoys the benefits of the bargain risk-free. Although World View will lease the building with an option to buy, this is an unlawful lease because County taxpayers are left with a \$15 million bill should World View default. The County doesn’t even expect a return on its investment until the 18th year of its 20-year agreement, and given the speculative nature of World View’s business—it has never given a ride to a single passenger—it is doubtful that World View will remain financially viable.

But even if World View were to succeed and either fulfill the lease or purchase the building, the consideration the County will receive is inadequate. The County will, at best, recover its investment capital plus a profit that is less than other, safer investments would produce—all while subjecting taxpayers to enormous risks. Moreover, World View will have the exclusive right to control the balloon pad, including the ability to charge rent to other space balloon companies. At most, the County will receive the cost of maintenance for the balloon pad.

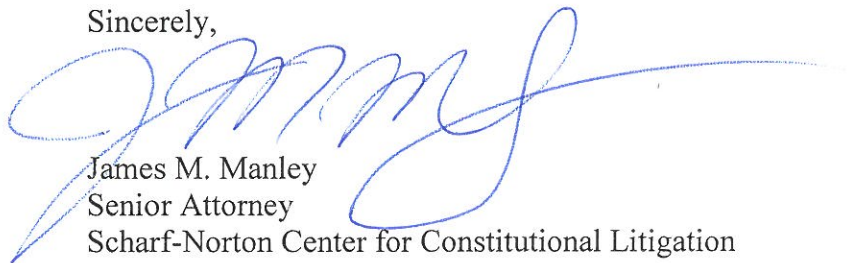
This agreement also violates Arizona law and the Pima County Procurement Code. The County consulted in secret with Swaim Associates, Ltd., and Barker Morrissey Contracting, Inc., for at least six months before seeking approval to contract with them for design and construction of the balloon pad and facilities. The County then awarded both contracts to these corporations without competitive bidding, by claiming that an “emergency” existed under A.R.S. § 34-606. There was no emergency. The County simply set an expedited timeline, and then used that deadline to claim that there was insufficient time for legally mandated competitive bidding. This is unlawful, and is an affront to taxpayers who will be forced to shoulder the financial burden for the County’s defiance of competitive bidding laws and the Arizona Constitution.

Because the County entered into illegal contracts with World View, Swaim Associates, and Barker Morrissey, the Goldwater Institute respectfully requests that the County terminate the agreements and cancel the related COPs. Should the County ignore this request, it will be liable to a constitutional and statutory challenge by County taxpayers to enjoin these illegal expenditures.

We appreciate your thoughtful consideration of these matters and look forward to receiving a response no later than **April 8, 2016**.

If you have any questions in the meantime, please do not hesitate to contact me directly at jmanley@goldwaterinstitute.org or (602) 462-5000.

Sincerely,



James M. Manley
Senior Attorney
Scharf-Norton Center for Constitutional Litigation
at the Goldwater Institute

cc. Ally Miller (Supervisor, District 1)
Ramón Valadez (Supervisor, District 2)
Ray Carroll (Supervisor, District 4)
Richard Elías (Supervisor, District 5)
Chuck Huckelberry (County Administrator)
Robin Brigode (Clerk of the Board)\
Barbara LaWall (Pima County Attorney)

Exhibit 8
Affidavit of Carter Volle - April 10, 2017

1 **BARBARA LAWALL**
2 **PIMA COUNTY ATTORNEY**
3 **CIVIL DIVISION**
4 Regina L. Nassen, SBN 014574
5 Andrew L. Flagg SBN 25889
6 Deputy County Attorneys
7 32 North Stone Avenue, Suite 2100
8 Tucson, Arizona 85701
9 Telephone: 520-724-5700
10 Regina.Nassen@pcao.pima.gov
11 Andrew.Flagg@pcao.pima.gov
12 *Attorneys for Defendants*

8 **ARIZONA SUPERIOR COURT**
9 **PIMA COUNTY**

10 Richard Rodgers, et al.,
11 Plaintiffs,

12 vs.

13 Charles H. Huckelberry, et al.,
14 Defendants.

Case No. C20161761

AFFIDAVIT OF CARTER VOLLE

(The Honorable Catherine Woods)

15 STATE OF ARIZONA)
16 County of Pima) ss.

17 Carter L. Volle, being first duly sworn, upon his oath, deposes and states as follows:

18 1. I am employed as New Building Services Architectural Manager with the
19 Pima County Facilities Management Department. I am a Registered Architect in the State
20 of Arizona. I make this Affidavit based on my personal knowledge.

21 2. I am assigned as the Project Manager for the Facilities Management
22 Department for Project Curvature, overseeing the design and construction of the Facility
23 and SpacePort located on the County-owned parcel addressed at 1805 E. Aerospace
24 Parkway, Tucson, AZ 85756.

25 3. As part of my duties, I am responsible for tracking costs incurred as part of
26 the design and construction of the Facility and SpacePort. I am familiar with the contracts

1 for design and construction of the Facility and SpacePort and the amounts invoiced and
2 paid under those contracts to date.


3 4. For purposes of tracking expenditures, the Facility and SpacePort have been
4 divided into two separate "projects." The Facility has been assigned project number
5 CFM.XPCWV1, and the SpacePort has been assigned project number CFM.XPCWV2.
6 Design and construction costs incurred for the Facility are accounted for within project
7 number CFM.XPCWV1, and design and construction costs associated with the SpacePort
8 are accounted for within project number CFM.XPCWV2. The portion of design cost
9 attributable to the SpacePort is an estimate provided by Swaim Associates because design
10 costs were not separately itemized in the design process.

11 5. As of March 29, 2017, Pima County had paid to Swaim Associates a total of
12 \$655,306 under its contract, with \$50,000 of that cost allocated to the SpacePort and the
13 remainder to the Facility. This represents approximately 90% of the contract's \$726,595.00
14 not-to-exceed amount. That contract, however, includes a \$30,000 contingency, and Pima
15 County currently does not anticipate paying the full \$726,595.00 to Swaim Associates.
16 Swaim has substantially completed its design work on both the Facility and SpacePort.

17 6. As of March 29, 2017, Pima County had paid to Barker Morrissey
18 Contracting a total of \$12,147,052 under its contract, with \$10,166,619 of that allocated to
19 the Facility and \$1,980,433 allocated to the SpacePort. This represents approximately 98%
20 of the contract's \$12,399,659.41 guaranteed maximum price. Barker Morrissey has
21 substantially completed construction of the Facility and SpacePort.

22
23 
24 Carter L. Volle, R.A.

25 SUBSCRIBED AND SWORN TO before me on April 10, 2017, by Carter L. Volle.

26 
Notary Public

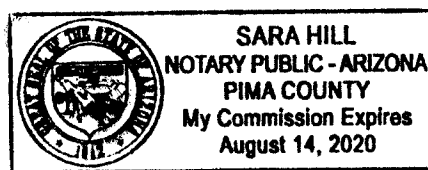


Exhibit 9
Certificate of Substantial Completion



AIA® Document G704™ – 2000

Certificate of Substantial Completion

PROJECT:

(Name and address)

World View
1805 E. Aerospace Parkway
Tucson, AZ 85719

PROJECT NUMBER: 1518/16011

CONTRACT FOR: General Construction

CONTRACT DATE: 02/17/2016

OWNER: ☐

ARCHITECT: ☐

CONTRACTOR: ☐

FIELD: ☐

OTHER: ☐

TO OWNER:

(Name and address)

Pima County Facilities Management
150 West Congress - 3rd Floor
P.O. Box 791
Tucson, AZ 85719

TO CONTRACTOR:

(Name and address)

Barker Morrissey Contracting, Inc.
2127 E. Speedway Blvd.
Suite 101
Tucson, AZ 85719

PROJECT OR PORTION OF THE PROJECT DESIGNATED FOR PARTIAL OCCUPANCY OR USE SHALL INCLUDE:

Entire Project

The Work performed under this Contract has been reviewed and found, to the Architect's best knowledge, information and belief, to be substantially complete. Substantial Completion is the stage in the progress of the Work when the Work or designated portion is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion of the Project or portion designated above is the date of issuance established by this Certificate, which is also the date of commencement of applicable warranties required by the Contract Documents, except as stated below:

Warranty

2 Years

Date of Commencement

December 23, 2016

Swaim Associates, Ltd.

ARCHITECT

BY

12/23/2016

DATE OF ISSUANCE

A list of items to be completed or corrected is attached hereto. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Unless otherwise agreed to in writing, the date of commencement of warranties for items on the attached list will be the date of issuance of the final Certificate of Payment or the date of final payment.

Cost estimate of Work that is incomplete or defective: \$500,000.00

The Contractor will complete or correct the Work on the list of items attached hereto within Thirty (30) days from the above date of Substantial Completion.

Barker Morrissey Contracting, Inc.

CONTRACTOR

BY

12/28/2016

DATE

The Owner accepts the Work or designated portion as substantially complete and will assume full possession at 12:00 AM (time) on 12/23/2016 (date).

Pima County Facilities Management

OWNER

BY

12.27.2016

DATE

The responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance shall be as follows:

(Note: Owner's and Contractor's legal and insurance counsel should determine and review insurance requirements and coverage.)

Owner / World View accepts full responsibility for security, maintenance, utilities, insurance, and damage to the completed Work. Contractor is responsible for security and damage to existing work when completing punch list items.

Exhibit 10
Temporary Certification of Occupancy



www.pima.gov

Building & Site Development

Record: P16BP03605

Valid Through 12/23/2016 to 01/13/2017
Temporary Certificate of Occupancy

This certificate is issued pursuant to the requirements of the International Building Code certifying that at the time of issuance the following structure was in Compliance with the various ordinances regulating building construction or use.

Description: Building envelope and tenant improvement for World View and rev 1: I-Joist calculations and rev 2: metal building and rev 3: deferred stair submittal and rev 4: changes to site, structural, fire protection and mechanical and rev 5: lighting calculations

Building Address: 1805 E AEROSPACE PW TUCSON, AZ

Building Owner: PIMA COUNTY

..

Design occupancy Load: 800

Occupancy Group: B, F1

Construction Type: IIB

Date: 12/23/2016

Yves Khawam, PhD. Chief Building Official

Exhibit 11
Certificate of Occupancy



Building & Site Development

Record #: P16BP03605

Certificate of Occupancy

This certificate is issued pursuant to the requirements of the International Building Code certifying that at the time of issuance the following space was in Compliance with the various ordinances regulating building construction or use.

Description: Building envelope and tenant improvement for World View and rev 1: I-Joist calculations and rev 2: metal building and rev 3: deferred stair submittal and rev 4: changes to site, structural, fire protection and mechanical and rev 5: lighting calculations

Building Address: 1805 E AEROSPACE PW, TUCSON, AZ 85756

Building Owner: PIMA COUNTY
.. 00000-0000

Design Occupancy Load: 800

Occupancy Group: B, F1

Construction Type: IIB

Fire Sprinklers Required: Yes

Building Code Edition: 2012

Issued Date: 02/08/2017

A handwritten signature in black ink, appearing to read "Yves Khawam", is positioned above a horizontal line.

Yves Khawam, PhD. Chief Building Official

Exhibit 12
Affidavit of Carter Volle
February 2017

1 BARBARA LAWALL
2 PIMA COUNTY ATTORNEY
3 CIVIL DIVISION
4 Regina L. Nassen, SBN 014574
5 Andrew L. Flagg SBN 25889
6 Deputy County Attorneys
7 32 North Stone Avenue, Suite 2100
8 Tucson, Arizona 85701
9 Telephone: 520-724-5700
10 Regina.Nassen@pcao.pima.gov
11 Andrew.Flagg@pcao.pima.gov
12 *Attorneys for Defendants*

ARIZONA SUPERIOR COURT
PIMA COUNTY

10 Richard Rodgers, et al.,
11 Plaintiffs,

12 vs.

13 Charles H. Huckelberry, et al.,
14 Defendants.

Case No. C20161761

AFFIDAVIT OF CARTER VOLLE

(The Honorable Catherine Woods)

15 STATE OF ARIZONA }
16 County of Pima } ss.

17 Carter L. Volle, being first duly sworn, upon his oath, deposes and states as
18 follows:

19 1. I am employed as New Building Services Architectural Manager with the
20 Pima County Facilities Management Department. I am a Registered Architect in the State
21 of Arizona. I make this Affidavit based on my personal knowledge.

22 2. I am assigned as the Project Manager for the Facilities Management
23 Department for Project Curvature, overseeing the design and construction of the Facility
24 and Launch Pad located on the County-owned parcel addressed at 1805 E. Aerospace
25 Parkway, Tucson, AZ 85756.


26 3. On December 23, 2016, the Facility was certified as substantially complete.

1 A Temporary Certificate of Occupancy was issued that date, and a Certificate of
2 Occupancy was issued February 8, 2017.

3 4. World View Enterprises has since moved into the Facility and is currently
4 conducting business operations in the Facility.

5 
6 Carter L. Volle, R.A.

7
8 SUBSCRIBED AND SWORN TO before me on February __, 2017, by Carter L.
9 Volle.

10 
11 Notary Public

